



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.  
The ruling and judgment can be viewed in PDF  
format below.



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ATTORNEY GENERAL OF TEXAS

August 1, 2019

Mr. Andrew Devine  
Senior Associate Attorney  
Dallas County Hospital District  
5200 Harry Hines Boulevard  
Dallas, Texas 75235

**The ruling you have requested has been amended as a result of litigation and has been attached to this document.**

OR2019-21256

Dear Mr. Devine:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 778533 (DCHD# 19-31).

The Dallas County Hospital District d/b/a Parkland Health & Hospital System (the "system") received a request for all documents pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.111, 552.136, and 552.150 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 161.032 of the Health and Safety Code. Section 161.032 addresses a broad category of medical committees and provides, in relevant part, the following:

- (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena,

...

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under [the Act].

...

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Health & Safety Code § 161.032(a), (c), (f). A “medical committee” is any committee, including a joint committee of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, a hospital district, or a hospital authority. *See id.* § 161.031(a). The term also encompasses “a committee appointed *ad hoc* to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.” *Id.* § 161.031(b) (emphasis added).

The precise scope of the “medical committee” provision has been the subject of a number of judicial decisions. *See, e.g., Mem’l Hosp.—The Woodlands v. McCown*, 927 S.W.2d 1 (Tex. 1996); *Barnes v. Whittington*, 751 S.W.2d 493 (Tex. 1988); *Jordan v. Fourth Supreme Judicial Dist.*, 701 S.W.2d 644 (Tex. 1986). These cases establish “documents generated by the committee in order to conduct open and thorough review” are confidential. *Mem’l Hosp.*, 927 S.W.2d at 10; *Jordan*, 701 S.W.2d at 647-48; *Doctor’s Hosp. v. West*, 765 S.W.2d 812, 814 (Tex. App.—Houston [1st Dist.] 1988, no writ). This protection extends “to documents that have been prepared by or at the direction of the committee for committee purposes.” *Jordan*, 701 S.W.2d at 647-48. Protection does not extend to documents “gratuitously submitted to a committee” or “created without committee impetus and purpose.” *Id.*; *see also* Open Records Decision No. 591 (1991) (construing statutory predecessor to Health & Safety Code § 161.032). Additionally, we note section 161.032 does not make confidential “records made or maintained in the regular course of business by a hospital[.]” Health & Safety Code § 161.032(f); *see also Mem’l Hosp.*, 927 S.W.2d at 10 (stating reference to statutory predecessor to section 160.007 of the Occupations Code in section 161.032 is clear signal records should be accorded same treatment under both statutes in determining if they were made in ordinary course of business). The phrase “records made or maintained in the regular course of business” has been construed to mean records that are neither created nor obtained in connection with a medical committee's deliberative proceedings. *See Mem’l Hosp.*, 927 S.W.2d at 10 (discussing *Barnes*, 751 S.W.2d 493, and *Jordan*, 701 S.W.2d 644).

The system informs us its Quality of Care and Patient Safety Committee, which operates as a medical committee, oversees the Patient Safety and Risk Department (the “department”). The system states the purpose of the department is “ensuring overall quality assurance, safety and improvement throughout the [system].” The system states the information at issue “was internally prepared in the course of the [department’s] investigations and fact gathering and analysis functions in furtherance of its overall duties.” Further, the system states the submitted information is “not prepared in the regular course of business, reflect[s] the deliberative process of identifying incidents involving patient care, evaluating their causes and severity, and making recommendation[s], if appropriate, on how to remedy the situation and reduce the likelihood of recurrence.” Based on the system’s representations and our review, we agree some of the information at issue consists of confidential records of a medical peer review committee under section 161.032. *Cf. Texarkana Mem 7 Hosp., Inc. v. Jones*, 551 S.W.2d 33, 35 (Tex. 1977) (defining records made or maintained in regular course of business). Therefore, we conclude the system must withhold Exhibits C, E, and F under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code.<sup>1</sup> However, we note Exhibit D consists of law enforcement records held by the system’s police department. Because these pages consist of law enforcement records in the possession of a law enforcement agency, we find you have failed to establish this information consists of records of a medical committee. Therefore, we conclude you have not established Exhibit D is confidential under section 161.032 and the system may not withhold this information under section 552.101 on this basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The system asserts Exhibit D pertains to a case conducted by the system’s police department that concluded in a result other than conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) of the Government Code is applicable to Exhibit D.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

information, the system may withhold Exhibit D under section 552.108(a)(2) of the Government Code.<sup>2</sup>

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

You seek to withhold the basic information under section 552.111 of the Government Code. You state the basic information consists of advice, opinions, and recommendations of employees and officials of the commission regarding policymaking matters. Upon review, we find the basic information consists of information that is administrative or purely factual in nature. Thus, you have failed to demonstrate any of the basic information reveals advice,

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103. *See* Open Records Decision No. 597 (1991).

opinions, or recommendations that pertain to policymaking. Accordingly, the system may not withhold any portion of the basic information under section 552.111 of the Government Code on the basis of the deliberative process privilege.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 181.006 of the Health and Safety Code. Section 181.006 states in relevant part:

[F]or a covered entity that is a governmental unit, an individual's protected health information:

- (1) includes any information that reflects that an individual received health care from the covered entity; and
- (2) is not public information and is not subject to disclosure under [the Act].

Health & Safety Code § 181.006. Section 181.001(b)(2) defines “[c]overed entity,” in part, as:

[A]ny person who:

- (A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

*Id.* § 181.001(b)(2). We understand the system operates a hospital that maintains health information for the individuals it serves, including information showing that individuals received medical care from the system. Thus, you claim the system is a covered entity for the purposes of section 181.006 of the Health and Safety Code. You assert the basic information consists of protected health information. However, the information at issue is contained in records of the system’s police department, which is a law enforcement agency. You have not demonstrated how the system’s police department is a covered entity for purposes of section 181.006 of the Health and Safety Code. Thus, we find you have failed to demonstrate any of the basic information is subject to section 181.006 of the Health and Safety Code. Accordingly, the basic information may not be withheld under section 552.101 of the Government Code on that basis.

In summary, the system must withhold Exhibits C, E, and F under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. With the exception of basic information, which must be released, the system may withhold Exhibit D under section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield  
Assistant Attorney General  
Open Records Division

AC/be

Ref: ID# 778533

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Velva L. Price  
District Clerk  
Travis County  
D-1-GN-19-004876  
Jessica A. Limon

CAUSE NO. D-1-GN-19-004876

DALLAS COUNTY HOSPITAL	§	IN THE DISTRICT COURT OF
DISTRICT D/B/A PARKLAND	§	
HEALTH & HOSPITAL SYSTEM	§	
<i>Plaintiffs,</i>	§	
	§	TRAVIS COUNTY, TEXAS
v.	§	
	§	
KEN PAXTON, ATTORNEY GENERAL	§	
OF TEXAS	§	
<i>Defendant.</i>	§	200th JUDICIAL DISTRICT

**AGREED ORDER OF DISMISSAL**

This is an open records lawsuit, in which Dallas County Hospital District d/b/a Parkland Health & Hospital System (Parkland) seeks a declaratory judgment, pursuant to the Public Information Act (PIA), TEX. GOV'T CODE § 552.353(b), that certain information is protected from disclosure under the PIA. Parkland sued Ken Paxton, in his official capacity as Attorney General of Texas (Attorney General) based on his issuance of letter ruling OR2019-21256.

After this lawsuit was filed, Parkland submitted additional information and briefing to the Attorney General establishing that the information at issue is excepted from disclosure under Texas Government Code section 552.108 in conjunction with *City of Carrollton v. Paxton*, 490 S.W.3d 187 (Tex. App.—Austin 2016, pet. denied). The Attorney General has reviewed Parkland’s request and agrees to the settlement. All matters in controversy between Plaintiff, Parkland, and Defendant, the Attorney General, have been resolved, and the parties agree to the entry and filing of an Agreed Order of Dismissal.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General.

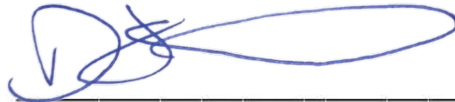
The Attorney General represents to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the Attorney General sent a certified letter to the requestor, Ms. Genecia Whitney, on \_\_\_\_\_ April 16 \_\_\_\_\_, 2020, informing her of the setting of this matter on the Court's submission docket on or after this date. The requestor was informed of the parties' agreement that the information would be withheld. The requestor was also informed of her right to intervene in the suit to contest this determination. Verification of the mailing of this letter is attached to this motion as "Exhibit A". The requestor has not filed a motion to intervene.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed order of dismissal is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED THAT:

1. Parkland and the Attorney General have agreed that in accordance with the PIA and under the facts presented, the information at issue in Parkland's January 8, 2020 correspondence with the Attorney General is excepted from disclosure in its entirety pursuant to Texas Government Code § 552.108. The parties also agree that Letter Ruling OR2019-21256 should not be relied upon as a prior determination.
2. All court cost and attorney fees are taxed against the parties incurring the same;
3. All relief not expressly granted is denied; and
4. This Agreed Order of Dismissal finally disposes of all claims that are the subject of this lawsuit between Parkland and the Attorney General and is a final judgment.

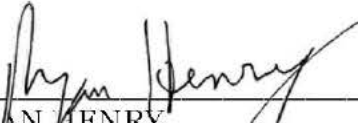
SIGNED the 20th day of May, 2020.



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PRESIDING JUDGE  
Dustin M. Howell

AGREED AS TO FORM AND SUBSTANCE:



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