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January 3, 2017

Office of the Attorney General  
 Open Records Division  
 300 West 15th Street  
 Austin, Texas 78701

Via Federal Express

*Re: Public Information Request Received from Isaiah X. Smith; Our File No. 16257*

Dear Attorney General Paxton:

The Tarrant County Hospital District (hereinafter, the “District”) received from Isaiah X. Smith (hereinafter, the “Requestor”), via electronic mail, a request for information under the Public Information Act (hereinafter, the “Act”) on November 25, 2016 (“PIA Request”). This law firm serves as general counsel to the District.

The District is a political subdivision of Tarrant County and observes the same holidays as Tarrant County. For purposes of calculating the ten (10) business day time period within which the District is to respond to the PIA Request, the Requestor’s PIA Request was received on Friday, November 25, 2016, which was a holiday. The District subsequently requested clarifications related to the original PIA Request. The Requester responded to each of the District’s requests for clarification. The chart below reflects the actions taken by the District and Requestor and the effect of each action on the ten (10) business day time frame within which the District is required to respond to the PIA Request to respond under the Act:

DATE	DOCUMENT	EXPLANATION	DAY COUNT
11/25/2016	Original Request	Thanksgiving Holiday	
11/28/2016	Original Request Officially Received		
12/2/2016	First Clarification Request	Sent from District to Requester	4 days used
12/7/2016	First Clarification Response Received	Sent from Requester to District	Days tolled

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12/8/2016	Second Clarification Request	Sent from District to Requester	1 day used
12/23/2016	Second Clarification Response Received	Sent from Requester to District	Days tolled
12/23/2016		Holiday	Days tolled
12/26/2016		Holiday	Days tolled
12/27/2016	Second Clarification Response Officially Received	Sent from Requester to District	
1/2/2017		Holiday	Days tolled
1/3/2017		End of 10 Business Days Based on Clarifications, Tolled Days and Holidays	5 days

A copy of this letter will serve as a response to the Requestor with respect to the information that the District believes should be excluded from disclosure under the Act. The District is requesting an opinion from your office pursuant to Section 552.301 of the Act.

**1. The Request**

The original PIA Request and the subsequent clarifications are attached as **Exhibit "A"**. The original PIA Request asked for the following information:

*"I hereby request the following records:*

- 1. All records that is in regards and pertaining to Section 5xi of the JPS Health Network Privacy Practices/Policies;*
- 2. All records that are in regards to and pertaining to Section 5xii of the JPS Health Network Privacy Practices/Policies;*
- 3. All written communication to and from federal officials that has been received and sent by the JPS Health Network in which are requests and disclosures as to the health information of individuals for intelligence, counterintelligence, and other national security activities authorized by law;*
- 4. All written communication to and from federal officials that has been received and sent by the JPS Health Network in which are requests and disclosures as to individuals health information for the purpose as to providing protection to the President, other authorized persons or foreign heads of state, or to conduct special investigations;*
- 5. Records reflecting a list of all cases, with docket numbers if available, including but not limited to sealed cases, in which federal officials were disclosed the health care information of individuals in regards and pertaining to Sections 5xi and 5xii;*

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6. *All court orders, subpoenas, and all other orders that have been submitted by federal officials to the JPS Health Network in which were orders for the disclosure of patients health care information by and through Section 5xi and 5xii;*
7. *All communications or agreements between the JPS Health Network and with federal officials concerning the use of sections 5xi and 5xii, the disclosure of information of individuals pertaining to those sections and the information disclosed that is in regards and pertaining to those sections of the privacy practices of the JPS Health Network.*
8. *A copy as to all healthcare information of all individuals that the JPS Health Network has disclosed to federal officials pursuant to Sections 5xi and 5xii of the JPS Health Network Privacy Practices/Policies.*

*For the record, a copy as to the JPS Health Network privacy policies is attaches in Exhibit 1. Please note that I would like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public understanding of the way in which the government operates, the privacy rights of individuals, the HIPPA privacy rights of patients, Section 5xi of the Privacy Practices of the JPS Health Network, Section 5xi of the Privacy Practices of the JPS Health Network, unlawful searches and seizures, communication between JPS Health Network and federal officials, the due process rights of citizens of the United States of America and the constitutional rights of patients and citizens of the United States of America. The information in which I am seeking assess to is of public concern and has educational contributable value.”*

The District requested clarification as follows:

*“Mr. Smith, our office is in receipt of your Open Records Request sent to our client the Tarrant County Hospital District, specifically sent to J.R. Labbe and received by Ms. Labbe on Monday, November 28, 2016 on her return from the Thanksgiving Holiday.*

*I need to clarify the time frame of your request, a definition of "federal officials" and also what information can be provided without the need of seeking an opinion on exceptions. It would probably be easier to talk through the issues if that is agreeable for you.”*

The Requester clarified as follows:

*“The term federal officials would mean employees, officers, agents, volunteers and staff members that are employed by and work for Federal Agencies of the United States of America, including but not limited to the following: the Federal Bureau of Investigation, U.S. Marshals, Central Intelligence Agency, U.S Department of Justice, U.S Department of Homeland Security, National Security Agency, Defense Intelligence Agency, National Geospatial-Intelligence Agency, the Drug Enforcement Administration, and the National Reconnaissance Office and et cetera.”*

The District sought further clarification as follows:

- “1. You did not provide a time frame for your request but it was not until 2013 when our medical records were switched to an electronic format that the Tarrant County Hospital District d/b/a JPS Health Network (the “District”) would be able to search for an entity who requested information. Prior to 2013 the District would have to know the person that the information was requested for and pull the medical record to find any requests or subpoenas. Please clarify that the time from would be from 2013 to the present;
2. You reference two sections of the Privacy and Practices/Policies, specifically Section 5., k. xi and xii, I need to clarify that you are only seeking information that the District would have released under the exceptions referenced and that the District did not receive a signed release from the individual that the federal officials were seeking information on; and
3. You have asked in your request that the District inform you if we would need to seek an exception to disclosure, based on your request for copies of documents that may contain a patient’s name and personal identifiers, as well as a copy of patient’s healthcare information we will have to seek an exception to disclosure.”

The final clarification from the Requester was as follows:

- “1. Please search all of your records from 2013 to present. Please search the requests that were made from the following, which include but are not limited to the following federal agencies: the Federal Bureau of Investigation, U.S. Marshals, Central Intelligence Agency, U.S Department of Justice, U.S Department of Homeland Security, National Security Agency, Defense Intelligence Agency, National Geospatial-Intelligence Agency, the Drug Enforcement Administration, and the National Reconnaissance Office and any other federal agency in which the requested information from the JPS Health Network or in which the District supplied information as listed in my open records request letter to the District.
2. All information that I have requested was and is listed in my open records request letter to the JPS Health Network. See #3, 4, 5, and 6. This does include information that the District would have released under your District's Policy/Privacy Practices and information in which was released or requested to be released in which the targeted individuals did not sign a release as to their records. My open records request also includes written communication to and from federal officials to the District as to the information in which I am requesting, such as letters, emails and et cetera.
3. The District needs to seek an opinion from the Texas Attorney's General's Office as to this issue. I want the District to seek an opinion from the Texas Attorney's office as to this issue. The JPS Health Network must notify all individuals in which records are contained in the information that would be released to me in my open records request, including patients, federal agencies and interested parties as to their rights to submit comments to the Texas A.G Office as to this issue. Please send all of those individuals and agencies a copy as to my open records request letter and a description as to their rights under the Texas Government Code as to submitting a comment to the Texas Attorney General's

*Office as to whether or not they want myself to receive the requested information. When your office does send those letters out, please send me a copy as to that correspondence.*

*I am not willing to withdraw my request, even if some of the information contains a patient's name, personal identifiers and healthcare information.”*

## 2. The Information

The District has responded to the Requestor under separate cover, a copy of which is attached as **Exhibit “B”**, and provided the Requestor with responsive information that is not confidential, privileged, or otherwise protected from disclosure under the Act. However, the District believes that, for the reasons set forth herein, there is information responsive to the PIA Request that is confidential, privileged, and/or otherwise protected from disclosure.

## 3. Exception to Disclosure

The District believes that the documents attached as **Exhibit “C”** are excepted from disclosure under Section 552.101 of the Government Code. Section 552.101 of the Act states that “information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Tex. Gov’t Code § 552.101 (West 2012).

After the District received all clarifications related to the PIA Request, the District searched the electronic medical records from January 1, 2013 to the present for any and all subpoenas, orders, or requests from federal officials that could possibly fall into the exception category described in the District’s Privacy and Practices/Policies, specifically Section 5., k. xi and xii, which state:

5. **HOW WE MAY USE AND DISCLOSE MEDICAL INFORMATION ABOUT YOU.** The following categories (listed in bold-face print, below) describe different ways that we use and disclose medical information. For each category of uses or disclosures we will explain what we mean and give you some examples. Not every use or disclosure in a category will be listed. However, all of the ways we are permitted to use and disclose information will fall within one of the bold-face print categories, below.

•••

k. Special Situations.

•••

- xi. **National Security and Intelligence Activities.** We may release medical information about you to authorized federal officials for intelligence, counterintelligence, and other national security activities authorized by law.
- xii. **Protective Services for the President and Others.** We may disclose medical information about you to authorized federal officials so they may provide protection to the President, other authorized persons or foreign heads of state, or

to conduct special investigations.

The District found one document believed to be responsive to the request, which it received from the Federal Bureau of Investigation (hereinafter, the "FBI") on May 25, 2016. Such document, which is attached as **Exhibit "C-1"**, is a Grand Jury Subpoena for certain medical records related to W.S.S.H. The FBI has informed the District that the information being requested is for an investigation being conducted of a federal crime and that the disclosure of the release could impair the investigation and enforcement of federal criminal law. The District provided the FBI with the requested medical records of W.S.S.H., copies of which are attached as **Exhibit "C-2"**.<sup>1</sup>

The District believes that the documents, attached as **Exhibit "C-1"** and **Exhibit "C-2"**, are excepted from disclosure under Section 552.108 of the Government Code, which provides in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
  - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication;
  - (3) it is information relating to a threat against a peace officer or detention officer collected or disseminated under Section 411.048; or
  - (4) it is information that:
    - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
    - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

The requested documents pertain to a federal criminal investigation being conducted by the FBI. While the District, in this instance, is not a law enforcement agency or prosecutor, the District is asserting the exception from disclosure and has notified the FBI of the Requestor's request for the documents attached hereto as **Exhibit "C-1"** and **Exhibit "C-2"**. While the Act does not apply to the federal government, the District has retained a copy of the Grand Jury Subpoena in the medical records for W.S.S.H.

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<sup>1</sup> **Exhibit "C-2"** contains the *Certificate of Authenticity of Domestic Business Records Pursuant to Federal Rule of Evidence 902(11)* executed and notarized on June 1, 2016 and 37 pages of W.S.S.H. medical records. Please note that the page count on June 1, 2016 was 39 pages. However, the print out of the same information on January 1, 2017 produced 37 pages. The District's EMR (Electronic Medical Record) System was upgraded on August 14, 2016. This upgrade provided additional annotations and changes to the printing/spacing which caused the change in the page count.

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The District is a health care provider and covered entity under the Health Insurance Portability and Accountability Act of 1996 (hereinafter, "HIPAA") and, as such, has an obligation to protect the health information of individuals treated as its facilities. The requested documents found in **Exhibit "C 2"** are the protected health information of W.S.S.H. HIPAA designates such information as protected health information. More specifically, section 1320d(4) defines health information as follows:

(4) Health information

The term "health information" means any information, whether oral or recorded in any form or medium, that--

(A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

Further, in addition to the protections afforded by HIPAA, the requested documents contain protected health care information as defined by Section 159.002(a) and (b) of the Occupations Code, which reads in part as follows:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

While the FBI presented the District with an exception to HIPAA, the Requestor has not. The requested documents found in **Exhibit "C-2"** are the protected health information of W.S.S.H. and, as such, the District believes they should be excepted from disclosure to the Requestor. The District has not notified W.S.S.H. of this PIA Request for W.S.S.H.'s medical records based on the information from the FBI that the disclosure of the subpoena and release could impair the investigation and enforcement of federal criminal law.

A copy of this letter will serve as a response to the Requestor that the documents requested by the Requestor in the PIA Request are believed to be excluded from disclosure under the Act.

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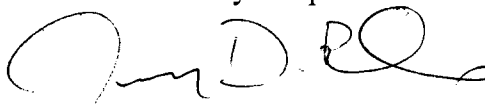
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If you have any questions regarding this request, please do not hesitate to contact me at (817) 552-7742. If I am unavailable, please feel free to contact my paralegal, Allison McCarthy, at (817) 702-3898.

Sincerely,

ADAMS, LYNCH & LOFTIN, P.C.  
General Counsel to the  
Tarrant County Hospital District



Jerry D. Bullard

cc: Isaiah X. Smith

Via regular mail, without enclosures

Jay Weimer, Assistant U.S. Attorney  
Office of the United States Attorney

Via regular mail, without enclosures

JR Labbe, Vice President,  
Communications and Community Affairs  
Tarrant County Hospital District

Via electronic mail, without enclosures