



**THE ATTORNEY GENERAL  
OF TEXAS**

August 10, 1987

**JIM MATTOX  
ATTORNEY GENERAL**

Mr. C. Robert Heath  
San Jacinto Center  
Suite 1800  
98 San Jacinto Boulevard  
Austin, Texas 78701

Open Records Decision No. 475

Re: Whether a list of persons certified to be served by the Special Transit System of the Capital Metropolitan Transit Authority and information related thereto is subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S.

Dear Mr. Heath:

You represent the Capital Metropolitan Transportation Authority (Capital Metro), which has received a request under the Open Records Act for a list of persons certified to be served by the Special Transit System (STS). The Special Transit System is available for persons with disabilities that prevent them from using regular transit services. The requestor seeks names, addresses, and telephone numbers of individuals certified to be served by STS. He originally also requested gender and ethnic status of these individuals, but amended his request to exclude these items of information upon learning that you do not keep such information.

You state that Capital Metro does not have a list of persons certified to use STS, but that it does have 5000 to 7000 applications and physician's verifications of disability which include names, addresses, and telephone numbers. Correspondence between Capital Metro and the requestor indicates agreement that the names, addresses, and telephone numbers of these applicants are the subject of his Open Records request.

Capital Metro contends that the names, addresses and telephone numbers sought are excepted from public disclosure by section 3(a)(1) of the Open Records Act as "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You argue that a common law right of privacy and a statutory right of privacy prevent the public disclosure of the names, addresses, and telephone numbers of applicants for the Special Transit System. You state that the disabilities which qualify persons to use STS include mobility impairing conditions which cause one to use a wheelchair as well as significant auditory, visual and cardiac respiratory impairments. You also state that persons who suffer from mental retardation or emotional disturbances may qualify for STS. You argue that privacy

rights may be invaded even though no information about individual disabilities has been requested. You state as follows:

While the disabilities of many STS riders are apparent, some are not. The mere fact that a person is identified as an STS rider may make it possible for persons to ascertain the existence of a disability that is not otherwise obvious and the disclosure of which the disabled individual would find to be highly objectionable.

In Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977), the Supreme Court of Texas considered whether information contained in workmen's compensation claim files was excepted from disclosure as information deemed confidential by a common-law right of privacy under section 3(a)(1) of the Open Records Act. The court stated that such information would be excepted from public disclosure by section 3(a)(1) if

(1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685. The court said that some of the workmen's compensation files may contain personal information which should be withheld from public disclosure. If the trial court found the nature of a claim to be confidential, only that information should be withheld from the public. The individual's name should be released, because

there is nothing intimate or embarrassing about the fact, in and of itself, that an individual has filed a claim for benefits.

540 S.W.2d at 686.

In our opinion, this holding of the Texas Supreme Court controls the present case. No intimate or embarrassing information about an individual is revealed when he is identified as an applicant for STS. Although information about the disabilities of some of the applicants may be protected by a right of privacy, their names, addresses, telephone numbers, and status as applicants for STS are not protected.

In Open Records Decision No. 298 (1981), this office concluded that the amount of disability payments made to a former employee were not excepted from public disclosure by section 3(a)(1) or section 3(a)(2) of the Open Records Act, which protects "information in personnel files, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy." V.T.C.S. art. 6252-17a, §3(a)(2). The employee received disability payments either because he was sick or because he had been in an accident. The amount of his disability payment was not intimate or embarrassing information about him. See also Open Records Decision No. 260 (1980) (information on city employee's prior injuries is not protected by subsections 3(a)(1) or 3(a)(2) of the Open Records Act).

You suggest that a disabled person may have a special privacy interest in his telephone number and address, since release of this information might indicate that the individual is susceptible to being a victim of exploitation or crime. You do not provide any facts to support this suggestion.

This office has considered whether the home addresses and telephone numbers of public employees were available under the Open Records Act.<sup>1</sup> Attorney General Opinion MW-283 (1980); Open Records Decision No. 169 (1977). Open Records Decision No. 169 (1977) stated that, absent special circumstances,

the overwhelming weight of authority holds that there is normally no legally recognizable privacy interest in one's home address.

The special circumstances necessary to bring a home address within the section 3(a)(2) exception for employees privacy "must be more than a desire for privacy or a generalized fear of harassment." Open Records Decision No. 169 (1977). In a few cases, public employees were able to show a privacy interest in their home addresses by (1) having taken effective action to restrict public access to that information and (2) demonstrating truly exceptional circumstances such as an imminent threat of physical danger as opposed to a generalized and speculative fear of harassment or retribution. The public employees whose home addresses were at issue in Open Records Decision No. 169 included policemen. The decision considered the possibility that the dangers connected with police work would make such employment a special circumstance per se, but concluded there was no statutory or judicial support for this position. Nor do we find such authority for viewing

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1. In 1979, the legislature added subsection 3(a)(17) to the Open Records Act, which excepted the home addresses and telephone numbers of peace officers from public disclosure. Acts 1979, 66th Leg., ch. 366, at 807, 808. In 1985, the act was amended to permit other public employees and officials to decide whether or not to allow public access to their home addresses and phone numbers. Acts 1985, 69th Leg., ch. 750, at 2573, 2574-75. See V.T.C.S. art. 6252-17a, §§3(a)(17), 3A.

the fact that someone has applied for STS as a special circumstance which would render his home addresses and phone number confidential. See also Open Records Decision No. 409 (1984) (names of burglary victims are not protected from disclosure by right of privacy incorporated by section 3(a)(1) of Open Records Act).

You cite two federal regulations directed at prohibiting recipients of federal funds from discriminating against persons with disabilities and claim that these provisions create a statutory right of privacy which would prohibit Capitol Metro from releasing the names, addresses, and telephone numbers of STS applicants. These regulations read as follows:

A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially reducing the likelihood that handicapped persons can benefit by the objectives of the recipient's program. . . . (Emphasis added).

49 C.F.R. §27.7(b)(4).

The obligation to comply with this part is not obviated or affected by any State or local law.

49 C.F.R. §27.17.

You suggest that persons with disabilities would be "much more hesitant" to apply to use STS if they knew that their names, addresses, and telephone numbers would be subject to public release. Thus, you conclude, release of the information would reduce the likelihood that disabled persons could benefit from the program, in violation of section 27.7(b)(4)(ii) of title 49 of the Code of Federal Regulations.

These regulations implement the following federal law:

No otherwise qualified individual with handicaps in the United States, as defined in section 7(8) [29 USCS §706(8)], shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such

regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. . . .

29 U.S.C.S. §794. The release of these names, addresses and phone numbers does not, in our opinion, cause any person, "solely by reason of his handicap," to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under Capital Metro's program of providing transportation services. Nor do we believe that release of the requested information would "have the purpose or effect of defeating or substantially reducing the likelihood that handicapped persons can benefit by the objectives" of the Capital Metro program. We cannot reasonably say that release of such information would substantially reduce the likelihood that disabled persons would be able to benefit from the program. The regulation is written in terms that suggest a more formidable obstacle to participation in a program than that raised by any participant's disinclination to subject his name, address, phone number, and status as an STS applicant to public disclosure. In our opinion, the requested information is not protected from disclosure by common-law privacy or a statutory right of privacy incorporated in section 27.7(b)(4) of title 49 of the Code of Federal Regulations.

You finally inquire about charging the requestor with the cost of redacting the requested information in the event that the information is determined to be open to the public. You have supplied us with blank copies of the Application for Special Transit Service Program and the Special Transit Services Program Verification of Disability. We understand from your letter and from your submission of these forms that Capital Metro records are kept in standard sized pages and not in computer record banks, in microfilm, or other similar record keeping systems.

The 70th Legislature has amended the cost provisions of article 6252-17a, V.T.C.S. See S.B. No. 560, 70th Leg. (1987) (effective August 31, 1987). At the present time, however, we may rely on the construction of existing provisions given in Attorney General Opinion Nos. JM-114 (1983) and JM-292 (1984) to answer your question.

Charges for photocopies of pages up to legal size are determined in accordance with article 6252-17a, V.T.C.S., section 9(a), and the guidelines promulgated thereunder by the State Purchasing and General Services Commission. See Attorney General Opinion JM-292 (1984). The permissible costs for employee time in photocopying standard size documents are built into the costs set by the State Purchasing Commission under section 9(a). See Attorney General Opinion JM-114 (1983). Where the redaction of computerized information is necessary to exclude information protected by section 3(a)(1), the requestor must pay the costs of redaction. See Industrial Foundation of the

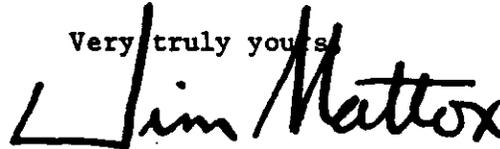
South v. Texas Industrial Accident Board, 540 S.W.2d at 687; Attorney General Opinion JM-292 (1984).

The Application for Special Transit Services Program requires the applicant's name, address, and telephone number to be stated on the first four lines. The requested information can be provided by photocopying the first four lines of each application and covering the remaining material. It appears unnecessary to use the Verification of Disability to respond to this request. The requestor may be charged for the cost of photocopies in accordance with section 9(a) and the guidelines of the State Purchasing and General Services Commission. Capital Metro should "make reasonably efficient use of each page of public records so as not to cause excessive costs for the reproduction of public records." V.T.C.S. art. 6252-17a, §9(c).

S U M M A R Y

The names, addresses, and telephone numbers of applicants to the Capital Metropolitan Transportation Authority for Special Transit Systems services available for disabled persons are not excepted from public disclosure by a common law or statutory right of privacy incorporated into section 3(a)(1) of article 6252-17a, V.T.C.S., the Open Records Act.

Very truly yours,



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