



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 27, 1996

Mr. Roland Castaneda  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR96-1032

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40527.

The Dallas Area Rapid Transit ("DART") received a request for:

any and all information concerning an accident [the requestor] had with a Dart bus driver Joseph F. Bakus. Specifically, copy of his medical records, the dollar amount of his medical expenses, and the name and number of the person who investigated this accident.

You state that DART has provided some of the requested information. However, you claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

You claim that the employee's medical records are excepted from disclosure under article 4495b of Vernon's Texas Civil Statutes. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include medical records, access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may be released only as provided by

the MPA. We have marked the documents that may be released only as provided by the MPA.

You next claim that certain worker's compensation information may not be disclosed pursuant to sections 402.083 and 402.091 of the Labor Code. Section 402.083(a) provides, "Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle." In Open Records Decision No. 533 (1989), this office concluded that the predecessor to this statute applied only to information held by the Texas Worker's Compensation Commission (the "commission") or transmitted by the commission. See Labor Code § 402.086. It appears here that most of the worker's compensation information was obtained from the employee and not from the commission. Thus, it is not confidential under section 402.083 of the Labor Code. See Open Records Decision No. 533 (1989). If, however, any of the information submitted to this office for review was obtained from the commission, then you must withhold only that information under section 402.083. *Id.*<sup>1</sup>

We note that some of the other information submitted to this office for review may be confidential. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

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<sup>1</sup>It appears that at least two of the documents were received from the commission. We have marked those documents for your information.

<sup>2</sup>We further note that even if the employee did not make the election to keep his social security number confidential prior to DART's receipt of this request, federal law may prohibit disclosure of his social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security number is confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 40527

Enclosures: Marked documents

cc: Ms. Patricia Jenkins  
9655 Chimney Hill Lane # 2001  
Dallas, Texas 75243  
(w/o enclosures)