



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 16, 1996

Mr. Roland Castaneda  
General Counsel  
Dallas Area Rapid Transit  
Post Office Box 660163  
Dallas, Texas 75266-7255

OR96-1149

Dear Mr. Castaneda:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37697.

The Dallas Area Rapid Transit ("DART") received a request for a list of employees who have been on short term disability for high blood pressure and the lengths of time they were off of work. The requestor has asked for this information from 1988 to the time of the request. You have informed the requester that such a list does not exist.<sup>1</sup> You indicate that the only responsive documents are the actual disability application forms, which contain medical information about each employee and a statement from a physician. A representative sample of the documents at issue has been submitted to this office for review.<sup>2</sup> You assert that these documents are excepted from disclosure pursuant to section 552.101.

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<sup>1</sup>You indicate that DART has a list of individuals who have taken disability leave, but apparently this list is not responsive to the request for those who have specifically taken leave due to high blood pressure.

<sup>2</sup>We note that the documents submitted concern various types of medical situations other than high blood pressure. For purposes of this ruling, we assume that these are the *type* of documents that would contain information about high blood pressure, although the actual documents submitted do not address high blood pressure. We note that this office generally assumes that the "representative sample"

In Open Records Decision No. 641 (1996), this office determined that medical information obtained pursuant to the Americans with Disabilities Act of 1990 (the "ADA") 42 U.S.C. § 12101 *et seq.*, is confidential under section 552.101 of the Government Code in conjunction with 42 U.S.C. § 12112. *See also* 29 C.F.R. § 1630.14(b)(1) (providing that medical information "shall be collected and maintained on separate forms and in separate medical files and be treated as a confidential medical record").

Section 12112(d)(3)(B) of title 42 of the United States Code provides that information regarding medical condition or medical history may be disclosed as follows:

- (i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
- (ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
- (iii) government officials investigating compliance with this Act shall be provided relevant information on request.

These restrictions are applicable to information about medical conditions obtained from employees. 29 C.F.R. § 1630.14(c)(1)(i)-(iii).

We note that since the requestor has asked for documents obtained by DART beginning with 1988, the ADA is not applicable to all of the documents at issue. The ADA is not applicable to information obtained prior to the effective date of 42 U.S.C. § 122112. *See* Pub. L. No. 101-336, Title I, § 108, 104 Stat. 337 (1990) (providing that this provision is effective 24 months after enactment of July 26, 1990 Act). As to documents obtained prior to this date, some of this information is confidential under section 552.101 in conjunction with other statutory provisions.

The doctors' statements are medical records, access to which is governed by provisions of the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Section 5.08(b) and (c) of the MPA provide:

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(Footnote continued)

of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988).

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) requires that any subsequent release of medical records be consistent with the purposes for which DART obtained the records. Open Records Decision No. 565 (1990) at 7. Thus, access to these medical records is not governed by chapter 552 of the Government Code, but rather provisions of the MPA. Open Records Decision No. 598 (1991).

The pre-ADA documents also contain information including the home addresses, home telephone numbers, and social security numbers of employees. Sections 552.117 and 552.024 provide that a current or former public employee or official can opt to keep private their home address, home telephone number, social security number, and information that reveals whether that person has family members. You must withhold information about those public employees and officials who, as of the time of the request for the information, had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). Federal law also provides for the confidentiality of social security numbers obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994) at 4.

We note that we have marked as confidential on the particular documents submitted to this office certain descriptions of illnesses.<sup>3</sup> Section 552.101 excepts information from disclosure that would be an invasion of privacy under the test set by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under that test, information is excepted from disclosure by common-law privacy if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public

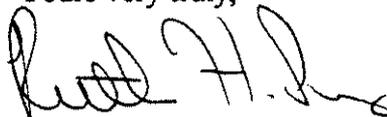
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<sup>3</sup>We note additionally that these particular descriptions are not responsive to the request for information.

concern. *Id.* The information we have marked is confidential under common-law privacy.<sup>4</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 determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 37697

Enclosures: Submitted documents

cc: Mr. Kenneth Kirk  
Amalgamated Transit Union  
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Dallas, Texas 75226  
(w/o enclosures)

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<sup>4</sup>As you have submitted only sample form documents that do not contain information about high blood pressure, we are unable to determine whether there is information on the responsive form documents that is protected by common-law privacy.