



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 2, 1998

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

OR98-2107

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# 118291.

The Dallas Area Rapid Transit ("DART") received a request for information pertaining to a DART employee, including the results of a background investigation DART conducted prior to hiring the employee. You have released most of the requested information to the requestor. You contend that certain highlighted portions of the background investigation report are excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the documents submitted for our review.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United*

¹Although you have raised section 552.108, you do not explain how the exception applies to the information you seek to withhold. A governmental body is required to submit "written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld." Gov't Code § 552.301(b)(1). Because you have not complied with section 552.301(b)(1), you may not withhold the information at issue under section 552.108.

States Dep't of Justice v. Reporters Comm. for Freedom of the Press, 489 U.S. 749 (1989). In *Reporters Committee*, the Supreme Court balanced the substantial privacy interest in avoiding disclosure of a criminal history compilation against the public interest in its release. *Id.* at 762. The court opined that the public interest in disclosure that would warrant an invasion of personal privacy is a request for official information to “open agency action to the light of public scrutiny.” *Id.* at 772. Accordingly, the court held “as a categorical matter that a third party’s request for law enforcement records or information about a *private* citizen can reasonably be expected to invade that citizen’s privacy, and that when the request seeks no ‘official information’ about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is ‘unwarranted.’” *Id.* at 780 (emphasis added).

Here, the request is for “official information” about a public employee. After reviewing the information you seek to withhold, we conclude that, in this instance, although the employee has a privacy interest in the information, there is a legitimate public interest in the green highlighted information. Contrary to your assertion, the requested information is not “merely information that DART happens to possess.” The background investigation is a part of DART’s hiring process and plays a role in its employment decision. Information about the qualifications of a public employee is of legitimate concern to the public. Open Records Decision No. 542 (1990). Thus, in this particular case, you may not withhold the green highlighted information under section 552.101 based on either common-law privacy or *Reporters Committee*.²

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

²For purposes of this ruling, we assume that the state and federal regulations governing criminal history information are not implicated. *See* 28 C.F.R. Pt. 20; Gov’t Code § 411.083.

Ref.: ID# 118291

Enclosures: Submitted documents

cc: Mr. Ronnie W. Johnson
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Arlington, Texas 76015
(w/o enclosures)