



October 4, 1999

Mr. Roland Castaneda
Dallas Area Rapid Transit
P.O. Box 660183
Dallas, Texas 75256-0163

OR99-2801

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128202.

Dallas Area Rapid Transit ("DART") received a request for certain information about one of its drivers. You assert that the responsive information is excepted from required public disclosure based on sections 552.101, 552.117 and 552.130 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by statute. You raise section 402.083(a) of the Labor Code, which reads as follows:

- (a) 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.

This provision makes confidential information in the Texas Workers' Compensation Commission's files. Section 402.086(a) of the Labor Code, which essentially transfers this confidentiality to information other parties obtain from the Commission, reads as follows:

- (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

You maintain that the information at issue is information which would be contained in or derived from the Commission's claim files. One document at issue appears to have been obtained from the Commission's claim files. We therefore conclude that DART must

withhold this document from the requestor based on section 552.101 of the Government Code in conjunction with sections 402.083 and 402.086 of the Labor Code. However, the other document, a workers compensation claim abstract report, appears to have been created by DART. We, therefore, do not believe that the Labor Code provisions apply to this three-page document.

You raise a confidentiality provision in the Medical Practices Act, V.T.C.S. article 4495b, section 5.08(b). This provision makes confidential “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” This provision does not apply to the workers compensation claim abstract report.

Section 552.101 of the Government Code also applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

While common-law privacy may protect an individual’s medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982). The common-law right to privacy also generally protects from disclosure an individual’s personal financial information, unless the information concerns a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992).

In addition, section 552.101 incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests: (1) an individual’s interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the “zones of privacy,” as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The “zones of privacy” implicated in the individual’s interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest

that implicates constitutional privacy involves matters outside the zones of privacy. To determine whether the constitutional right to privacy applies, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. *See* Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

We have reviewed the workers compensation claim abstract report and conclude that portions of it are excepted from public disclosure based on the common-law right to privacy in conjunction with section 552.101 of the Government Code. We have marked the document accordingly.

You also raise section 552.117 of the Government Code. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the information of an 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 the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information 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.

Therefore, if the employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code, we believe you must withhold this information from required public disclosure pursuant to section 552.117. If the employee has not made the section 552.024 election to keep confidential the section 552.117 information, the social security number may nevertheless be confidential. Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by DART pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you raise section 552.130 of the Government Code. Section 552.130 of the Government Code provides as follows

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;

(2) a motor vehicle title or registration issued by an agency of this state; or

(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

We have reviewed the submitted information. We conclude that section 552.130 is inapplicable.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/nc

Ref.: ID# 128202

Encl. Submitted documents

cc: Mr. Samuel R. Wilkerson, Jr.
828 Timber Dell Lane
Dallas, Texas 75232
(w/o enclosures)