



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2006

Ms. Paula J. Alexander
General Counsel
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208

OR2006-00746

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 240727.

The Metropolitan Transit Authority of Harris County ("Metro") received a request for 11 categories of information pertaining to Metro's operations and investigations. The requestor subsequently modified his request twice.¹ You inform us you will release the requested information upon proper payment. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You inform us that Metro does not have possession of, nor access to, some of the requested information because it is in the possession of First Transit, Inc., the contractor with which Metro entered into a contract for transit related services. However, the requestor argues First Transit's information is public information subject to the Act. Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of

¹See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

access to the information. *See* Open Records Decision No. 462 (1987). Where a third party has prepared information on behalf of a governmental body and the governmental body has a right of access to it, the information is subject to the Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 (1990).

In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were "public information" for purposes of the Act. In that open records decision, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by the consultant in preparation of the report were not "public information" for purposes of the Act, and thus not required to be disclosed. *Id.*

In this instance, you state that Metro does not own or have a right of access to the requested information regarding First Transit, and in support of this, you have submitted Metro's contract with First Transit. You state that Metro does not have access to the following requested information regarding First Transit bus operators: driver qualification files, pay scale information, in-house investigations for fatal accidents, and in-house investigations for the specified accidents. Pursuant to Article 36 of the contract, the only information that is made available to Metro by First Transit regarding their employees is a list that includes the employees' full names and social security numbers. Furthermore, pursuant to Article 25 of the contract, First Transit is only required to submit to Metro copies of any accident investigation reports and to keep Metro apprised of the status of any claims or legal actions. Metro states that it will release the copies of the requested accident reports.

Metro's contract with First Transit does not provide Metro a right of access to the requested information listed above that is maintained by First Transit. Thus, because Metro neither maintains nor has a right of access to the information, the information at issue is not "public information" under the Act, and Metro is not required to produce these records in response to the request for information. Gov't Code § 552.002; *see* ORD 445.

Next, we note that the submitted information contains accident report forms that appear to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4). Under this provision, the Department of Public Safety or another governmental body is required to release a copy of an accident report to a

person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has provided the required information. Thus, Metro must release the entire accident reports we have marked under section 550.065(c).

We note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides that “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” may not be withheld from the public unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov’t Code § 552.022(a)(1). The submitted information contains completed investigations made for Metro, which are made expressly public by section 552.022, unless they are expressly made confidential under other law. Section 552.103 of the Government Code is a discretionary exception under the Act that does not constitute “other law” for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (section 552.103 may be waived). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, Metro may not withhold any information under section 552.103 of the Government Code.

The submitted documents contain Metro employees’ personal information. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. You do not inform us whether the Metro personnel at issue timely elected to keep the information confidential. We therefore determine that if the individuals at issue timely elected to keep such information confidential pursuant to section 552.024, Metro must withhold the information we have marked pursuant to section 552.117(a)(1). If, however, the Metro personnel at issue did not timely elect to keep the information confidential, Metro may not withhold this information under section 552.117(a)(1). We note, however, that the protection afforded by section 552.117 does not extend to the social security number of a deceased employee. *Cf.* Attorney General Opinions JM-229, H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272. Therefore, the deceased employee’s social security number may not be withheld under section 552.117(a)(1).

The submitted information also contains Texas driver’s license and motor vehicle information. Section 552.130 of the Government Code excepts from public disclosure information that relates to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Metro must withhold the Texas driver’s license and motor vehicle information we have marked pursuant to section 552.130. We note that the purpose of section 552.130 is to protect the privacy interests of individuals and that the right to privacy lapses at death. *See generally Moore v. Charles B. Pierce Film Enters.,*

Inc., 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979); Attorney General Opinions JM-229; H-917; Open Records Decision No. 272 at 1 (1981). Thus, the Texas driver's license number pertaining to the deceased individual is not excepted from disclosure under section 552.130.

Lastly, the submitted information contains social security numbers. Section 552.147 of the Government Code² provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Metro must withhold the social security numbers of living persons we have marked under section 552.147.³

In summary, Metro must release the entire accident reports we have marked under section 550.065(c). Metro must withhold the information we have marked under sections 552.117, if the employees made timely elections, 552.130, and 552.147 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

³We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/er

Ref: ID# 240727

Enc. Submitted documents

c: Mr. Todd Spivak
Houston Press
1621 Milam, Suite 100
Houston, Texas 77002
(w/o enclosures)