



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 12, 2007

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

OR2007-04118

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# 276137.

The Metropolitan Transit Authority of Harris County (the "authority") received a request for information relating to an incident on an authority bus involving a named individual. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that some of the submitted information is not related to the incident that is the subject of this request for information. Therefore, that information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, which the authority need not release.

We next note that the remaining information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigative made of, for, or by a governmental body," unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the responsive information consists of a completed investigation made by the authority. You do not claim an exception to disclosure under section 552.108. Although you seek to withhold the information at issue under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App. – Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information

confidential for the purposes of section 552.022(a)(1). Therefore, the authority may not withhold any of the submitted information under section 552.103.

We note that the authority may be required to withhold some of the submitted information under section 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. We have marked home addresses and telephone numbers and social security numbers of employees of the authority that must be withheld under section 552.117(a)(1), to the extent that the employee who is the subject of the information timely requested confidentiality for his home address and telephone number and social security number under section 552.024.

We also note that the submitted information includes Texas driver's license numbers. Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state.² *See* Gov't Code § 552.130(a)(1). We have marked Texas driver's license numbers of the authority's employees that must be withheld under section 552.130. We note that the submitted information also includes the Texas driver's license number of the individual who is the subject of this request for information. The requestor states that his office represents the named individual. Thus, because section 552.130 protects personal privacy, the requestor has a right of access under section 552.023 of the Government Code to his client's Texas driver's license number. *See* Gov't Code § 552.023(a).³ Therefore, that information may not be withheld under section 552.130 and must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²Section 552.130 also is a mandatory exception that may not be waived. Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4.

³Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

The submitted information also includes an insurance policy number. Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.”⁴ Gov’t Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). The authority must withhold the insurance policy number that we have marked under section 552.136.

In summary: (1) the authority must withhold the marked home addresses and telephone numbers and social security numbers of its employees under section 552.117(a)(1) of the Government Code, to the extent that they timely requested confidentiality for that information under section 552.024 of the Government Code; (2) the authority must withhold the marked Texas driver’s license numbers of its employees under section 552.130 of the Government Code; and (3) the authority must withhold the marked insurance policy number under section 552.136 of the Government Code.⁵ To the extent that the submitted audiotapes contain information that is excepted from disclosure under section 552.117 or section 552.130, the authority also must withhold that information. In the event that the authority has no means of redacting information from the audiotapes, the tapes must be withheld in their entirety. The rest of the submitted information must be released.⁶

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

⁴Section 552.136 also is mandatory and may not be waived. Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4.

⁵To the extent that the employees’ social security numbers are not excepted from disclosure under section 552.117(a)(1), we 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. The requestor has a right of access, however, to his client’s social security number. *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

⁶In addition to the Texas driver’s license and social security numbers of the requestor’s client, the submitted records also contain information relating to the client that the authority would be required to withhold from the public under section 552.101 of the Government Code in conjunction with common-law privacy. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The requestor also has a right of access to that information under section 552.023. Should the authority receive another request for these same records from a person who would not have a right of access to the private information relating to the requestor’s client, the authority should resubmit these records and request another decision. *See* Gov’t Code § 552.301(a), .302.

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).

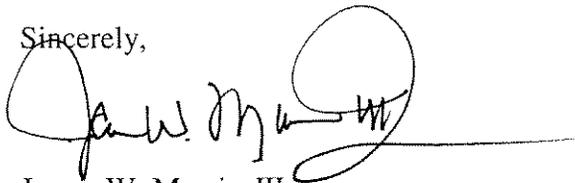
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jb

Ref: ID# 276137

Enc: Submitted documents

c: Mr. David M. Irwin
Terry Bryant, L.L.P.
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(w/o enclosures)