



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2007

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

OR2007-12318

Dear Mr. Simmons:

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# 289707.

The Dallas Area Rapid Transit ("DART") received a request for information relating to a specified incident. You state that DART has released some of the requested information. You claim that the information in Attachment B is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that DART has not fully complied with the requirements of section 552.301 of the Government Code in seeking this open records decision. Section 552.301 prescribes the procedures that a governmental body must follow when seeking to withhold responsive information from public disclosure. Specifically, the governmental body must seek a ruling from this office and state its claimed exceptions to disclosure within ten business days of receiving the written request. See Gov't Code § 552.301(a), (b). You state that DART received the present request for information on June 26, 2007. However, you did not request a ruling until July 18, 2007. You state that you notified the requestor that the responsive information "will be available by July 19, 2007[,]" pursuant to section 552.221(d) of the Government Code. We note, that while section 552.221 does allow a governmental body that does not seek to withhold responsive information from disclosure to negotiate with the requestor the date and hour the information will be made available, it does not grant a governmental body additional time to seek an open records decision in accordance with section 552.301. See *id.* § 552.221(d). Furthermore, although you indicate DART requested

an extension from the requestor in order to collect the responsive information and comply with the Act, the deadlines contained in section 552.301 are fixed by statute and cannot be altered by agreement. *See* Open Records Decision No. 541 at 3 (1990) (“[T]he obligations of a governmental body under the [predecessor to the Act] cannot be compromised simply by its decision to enter into a contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision No. 514 (1988).”). Thus, you did not request a decision and state the exception you claim within the ten-business-day period prescribed by section 552.301(b). Therefore, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold any of the information. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. — Austin 1990, no writ). A compelling reason exists when the information is confidential by other law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Although you claim section 552.103 of the Government Code as an exception to disclosure, section 552.103 is a discretionary exception that protects a governmental body’s interests and may be waived. *See 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 section 552.103). Thus, DART may not withhold any of the information in Attachment B under section 552.103 of the Government Code.

We note that section 552.117 of the Government Code may be applicable to some of the submitted information.<sup>1</sup> Section 552.117(a)(1) 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 request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, DART may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. If the employee at issue timely elected to keep her personal information confidential, DART must withhold the information we have marked under section 552.117(a)(1). DART may not withhold this information under section 552.117 if this employee did not make a timely election to keep the information confidential.

We note that the submitted information contains an insurance policy number. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, 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.” Gov’t Code § 552.136. DART must withhold the insurance policy number we have marked under section 552.136 of the Government Code.

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Finally, we note that a portion of the submitted information has notice of copyright protection. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, DART must withhold the information that we have marked under section 552.117(a)(1) of the Government Code, if the employee at issue timely elected to keep her personal information confidential. DART must withhold the insurance policy number that we have marked under section 552.136 of the Government Code. The remaining information in Attachment B must be released in accordance with applicable copyright laws for any information protected by copyright.<sup>2</sup>

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

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<sup>2</sup>We note that the information being released contains information that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, as the representative of the individual to whom the information pertains, the requestor has a special right of access to this information. *See* 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). If DART receives another request for this information from a person who would not have a special right of access, DART should resubmit this same information and request another decision. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

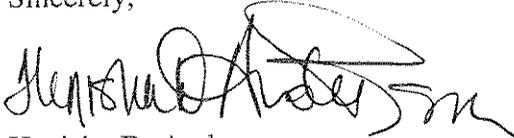
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/jb

Ref: ID# 289707

Enc. Submitted documents

c: Mr. David S. Hughey  
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(w/o enclosures)