



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2009

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

OR2009-14425

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# 358309.

Dallas Area Rapid Transit ("DART") received a request for the in-car video of a specified traffic stop, maintenance and service records for the cameras that captured the specified stop, service records for the officers involved in the specified stop, the DART mission statement, information related to DART's jurisdiction, and map markings of the location of the specified stop. You state that some information has been released to the requestor. You state that DART has no responsive information related to the requested in-car video, map markings, or camera maintenance and service records.¹ You claim that portions of the submitted information are exempted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor agreed to allow DART to redact the officers' address information from the requested information. As this information is no longer encompassed by the request, it is not responsive and we do not address its availability in this ruling.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

statutes, including the Medical Practices Act (the "MPA"). Occ. Code §§ 151.001-165.160. Section 159.002 of the Occupations Code provides in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a), (b), (c). This office has concluded that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). This office has also determined when a file is created as the result of a hospital stay, all of the documents in the file that relate to diagnosis and treatment constitute either physician-patient communications or records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician. *See* Open Records Decision No. 546 (1990). Medical records must be released on receipt of the patient's signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, 159.005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See* Occ. Code § 159.002(c); Open Records Decision No. 565 at 7 (1990). We find that portions of the submitted information consist of medical records that fall within the scope of the MPA. Thus, DART must withhold this information, which we have marked, under section 159.002 of the Occupations Code, unless it receives the required written consent for release of the information under sections 159.004 and 159.005 of the Occupations Code.

The submitted information also contains an L-2 Declaration of Medical Condition form required by TCLEOSE. This form is confidential under section 1701.306 of the Occupations Code, which is also encompassed by section 552.101 of the Government Code. Section 1701.306 provides the following:

(a) [TCLEOSE] may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to [TCLEOSE]. A declaration is not public information.

Id. § 1701.306(a), (b). Thus, we determine that the constable must withhold the submitted L-2 declaration we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

We note the submitted information includes the social security number and home phone number of a peace officer. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and the family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer requested confidentiality under section 552.024 or section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Accordingly, DART must withhold the information we have marked under section 552.117(a)(2).

Next, you claim some of the remaining information is confidential under section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, DART must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

You also raise section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purposes of communicating electronically with a governmental body," unless the member of the public consents to its release, or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137 (a)-(c). We have marked an e-mail address in the

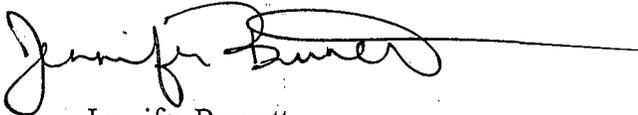
remaining information that is not of a type specifically excluded by subsection (c). Accordingly, DART must withhold the marked e-mail address under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.

In summary, DART must withhold the information we have marked under section 159.002 of the Occupations Code, unless it receives the required written consent for release of the information under sections 159.004 and 159.005 of the Occupations Code. DART must withhold the L-2 form we have marked under section 1701.306 of the Occupations Code. DART must also withhold the information we have marked under section 552.117(a)(2), and the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. DART must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/eeg

Ref: ID# 358309

Enc. Submitted documents

c: Requestor
(w/o enclosures)