



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2009

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

OR2009-17050

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# 368041.

The Dallas Area Rapid Transit ("DART") received a request for the entire employment application of a named individual. You state you have released some information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.102 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101.

For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The type of information considered

intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (when considering prong regarding individual's privacy interest, the court recognized distinction between public records found in courthouse files and local police station and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history).

You argue that common-law privacy protects information relating to criminal conduct on the submitted employment applications. However, the information at issue was supplied by the applicant himself in response to questions posed on the employment application. Thus, this information is not criminal history information compiled by DART. Accordingly, no portion of the submitted information may be withheld under section 552.102. Furthermore, we find that, although the information at issue may be potentially embarrassing, it is of legitimate public interest and, therefore, may not be withheld under section 552.102. *See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 (1984) (scope of public employee privacy is narrow), 405 (1983) (manner in which employee performed job cannot be said to be of minimal public interest), 400 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy).*

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 [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130. Accordingly, DART must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

Next, we note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the current and former 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 this information be kept confidential under section 552.024 of the Government Code.¹ *Id.* § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5*

¹The Office of the Attorney General will raise a mandatory exception like section 552.117 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

(1989). 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 made. You have not informed us whether or not the employee whose information is at issue chose to withhold his personal information prior to DART's receipt of the request for information. Therefore, if the employee timely elected to withhold his personal information, DART must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employee did not timely elect to withhold his personal information, then DART may not withhold any of the marked personal information under section 552.117(a)(1) of the Government Code.²

In summary, DART must withhold the information we marked under section 552.130 of the Government Code. If the employee whose information is at issue timely elected to withhold his personal information, DART must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employee did not timely elect to withhold his personal information, then DART may not withhold any of the marked personal information under section 552.117(a)(1) of the Government Code. The remaining information must be released to the requestor.

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

²We note that even if section 552.117 is inapplicable, 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. Gov't Code § 552.147.

Ref: ID# 368041

Enc. Submitted documents

cc: Requestor
(w/o enclosures)