



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2010

Ms. Shirley Thomas
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2010-01681

Dear Ms. Thomas:

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# 369214 (ORR DART #6992).

Dallas Area Rapid Transit ("DART") received a request for passenger slips, internal reports, investigation reports and conclusions, and the driver's report related to a specified accident involving a DART bus. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.111, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022 provides in pertinent part that:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made by or for DART, which is expressly public under section 552.022(a)(1). Therefore, the submitted investigation, including the photographs and audio recording, must be released unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. You do not raise section 552.108, although you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. These sections, however, are discretionary exceptions that a governmental body may waive. *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); Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.103 and 552.111 are not "other law" that make information expressly confidential for purposes of section 552.022. Thus, no portion of the submitted information may be withheld under either section 552.103 or section 552.111 of the Government Code. Sections 552.101, 552.130, 552.136, and 552.137 of the Government Code, which you also raise, are "other law" for the purposes of section 552.022(a)(1). We note portions of the completed investigation contain information subject to section 552.117, which is also "other law" for purposes of section 552.022.¹ Therefore, we will consider these exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section incorporates the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The types 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. In addition, this office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that no portion of the submitted investigation is highly intimate or embarrassing. Therefore, no portion of the submitted information is

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

confidential under common-law privacy, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or 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 official or 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 official or employee who did not timely request under section 552.024 that the information be kept confidential. Accordingly, DART must withhold the information we have marked under section 552.117(a)(1), to the extent that the employee whose information is at issue timely elected confidentiality for this information under section 552.024.

Section 552.130 of the Government Code 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 license plate numbers belonging to the bus, which we have marked, under section 552.130 of the Government Code. We note, however, the remaining Texas motor vehicle record information belongs to the requestor's insured driver. In this instance, the requestor is acting as the driver's authorized representative and has a right of access to this information. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); ORD 481. Thus, none of the Texas motor vehicle record information belonging to this individual may be withheld under section 552.130 of the Government Code.

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(b); *see id.* § 552.136(a) (defining "access device"). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. Accordingly, DART must withhold the insurance policy number we have marked under section 552.136 of the Government Code. However, section 552.136 also protects personal privacy; thus, this requestor has a right of access to the insurance policy number of the requestor's insured driver pursuant to section 552.023. Accordingly, DART

may not withhold the remaining insurance policy number from this requestor under section 552.136 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). *Id.* § 552.137 (a)-(c). Upon review, we find the remaining information does not contain an e-mail address. Thus, no portion of the remaining information may be withheld under section 552.137 of the Government Code.

We note that some of the remaining information may be subject to copyright law. 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 we have marked under section 552.117(a)(1), to the extent that the employee whose information is at issue timely elected confidentiality for this information under section 552.024. DART must also withhold the Texas license plate numbers belonging to the bus, which we have marked, under section 552.130 of the Government Code, and the insurance policy number we have marked under section 552.136 of the Government Code.² The remaining information must be released, but any copyrighted materials must be released in accordance with copyright law.³

²We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

³We note the information being released contains a social security number not belonging to the requestor's insured driver. 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. We also note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if DART receives another request for this information from a different requestor, DART must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a horizontal line extending to the right from the end of the signature.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 369214

Enc. Submitted documents

c: Requestor
(w/o enclosures)