



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2010

Mr. Harry F. Wright, Jr.  
Bracewell & Giuliani, LLP  
711 Louisiana Street, Suite 2300  
Houston, Texas 77002-2770

OR2010-05124

Dear Mr. Wright:

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# 375435.

The Metropolitan Transit Authority of Harris County ("METRO"), which you represent, received a request for copies of five categories of information related to METRO's General Counsel. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated 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. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are

excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure). Furthermore, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, METRO must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the common-law right of privacy. However, we find you have failed to demonstrate how the remaining information you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, this information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

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 employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers and home facsimile numbers, provided the cellular telephone service and facsimile number is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). However, an individual's personal post office box number is not a "home address" and therefore may not be withheld under section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear the purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)) (emphasis added). 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). METRO may only withhold information under section 552.117(a)(1) if the individual at issue elected confidentiality under section 552.024 prior to the date on which the request for this information was made. The submitted documents include an election form. However, the election form only permitted the employee at issue to request confidentiality for her home address and telephone number. The submitted election form shows the individual at issue timely elected to keep her home address and telephone number confidential. Therefore, METRO must withhold the home address and telephone numbers we have marked under

section 552.117(a)(1) of the Government Code. Additionally, METRO must withhold the remaining information we have marked under section 552.117(a)(1) if the individual at issue made a timely election under section 552.024 for that specific information. However, if the employee did not make a timely election under section 552.024 for the remaining information marked under section 552.117(a)(1), then that information is not excepted under section 552.117(a)(1) and may not be withheld on that basis.<sup>1</sup>

You claim portions of the submitted information are subject to section 552.130 of the Government Code. Section 552.130 provides 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). Upon review, we find the information we have marked consists of Texas motor vehicle record information. Accordingly, METRO must withhold the marked information under section 552.130 of the Government Code.

You assert portions of the remaining information are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. Upon review, we find portions of the submitted information constitute access device numbers under section 552.136. Accordingly, METRO must withhold the information we have marked under section 552.136 of the Government Code. However, we find you have failed to demonstrate the conference call codes you have marked constitute access device numbers that can be used alone or in conjunction with another access device to obtain money, goods, services, or another thing of value or can be used to

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<sup>1</sup>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. See Gov't Code § 552.147(b).

initiate a transfer of funds. Accordingly, METRO may not withhold conference call codes under section 552.136 of the Government Code.

You claim section 552.137 of the Government Code for portions of the remaining information. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose 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). *See id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. Therefore, METRO must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure or subsection (c) applies.

In summary, METRO must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with the common-law right of privacy; (2) the marked Texas motor vehicle record information under section 552.130 of the Government Code; (3) the information we have marked under section 552.136 of the Government Code; and (4) the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure or subsection (c) applies.<sup>2</sup> METRO must withhold the home addresses and telephone numbers we have marked under section 552.117(a)(1) of the Government Code. Additionally, METRO must withhold the remaining information we have marked under section 552.117(a)(1) if the individual at issue made a timely election under section 552.024 for that specific information. 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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number, a copy of a Texas driver's license, and a Texas license plate number under section 552.130 of the Government Code; credit card, bank account, and bank routing numbers under section 552.136 of the Government Code; and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/jb

Ref: ID# 375435

Enc. Submitted documents

c: Requestor  
(w/o enclosures)