



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2010

Ms. Jacqueline E. Hojem
Public Information Officer and Senior Paralegal
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2010-08031

Dear Ms. Hojem:

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# 382615 (MTA No. 2010-0414).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for information pertaining to a specified incident, specifically any evidence showing METRO was not negligent and a video of the incident. You claim the submitted information 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 you have submitted information that was not in existence when METRO received the instant request. This ruling does not address the public availability of non-responsive information, and METRO is not required to release non-responsive information in response to this request.

Next, we note the submitted information constitutes a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you seek to withhold this information under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a

governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, METRO may not withhold any of the submitted information under section 552.103. However, we note the submitted information contains information subject to sections 552.117 and 552.130 of the Government Code, which are "other law" for purposes of section 552.022.¹ Therefore, we will address these exceptions.

Section 552.117(a)(1) of the Government Code 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. *See Gov't Code* § 552.117(a)(1). We note section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular telephone service. *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). 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 (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 information was made. We have marked the home address and cellular telephone number of a METRO employee. If the employee at issue timely elected to withhold his personal information METRO must withhold the information we have marked pursuant to section 552.117(a)(1); however, METRO may only withhold the personal cellular telephone number we have marked if the cellular service was paid for with personal funds.

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[.]" *Gov't Code* § 552.130(a)(1). We have marked a Texas driver's license number. METRO must withhold the marked driver's license number under section 552.130.²

In summary, if the employee at issue timely requested confidentiality, METRO must withhold the home address and cellular telephone number we marked under

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

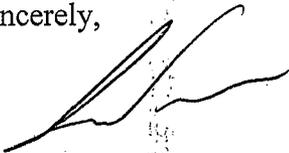
²We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.117(a)(1) of the Government Code; however, METRO may only withhold the cellular telephone number we have marked if the cellular service was paid for with personal funds. METRO must withhold the Texas driver's license number we marked under section 552.130 of the Government Code. 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 382615

Enc. Submitted documents

c: Requestor
(w/o enclosures)