



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2010

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

OR2010-09228

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#383918 (DART ORR #7341).

The Dallas Area Rapid Transit ("DART") received a request for all information pertaining to a specified investigation. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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. Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). 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. *See id.* at 683. This office has found that 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 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 portions of the information at issue are highly intimate or embarrassing and not of legitimate public concern. Thus, DART must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Upon review, we find the remaining information at issue either is not intimate or embarrassing or is of legitimate public interest. Therefore, none of the remaining information at issue may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) 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.<sup>1</sup> Gov't Code § 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 (1989). Thus, 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.

We have marked the information that may be subject to section 552.117. If the employee whose information is at issue timely elected to withhold her 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 this information, then DART may not withhold the marked information under section 552.117(a)(1) of the Government Code.

We note the information at issue contains a personal e-mail address. Section 552.137 of the Government Code 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* Gov't Code § 552.137(a)-(c). The e-mail address listed in the information at issue is not specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release.<sup>2</sup> *See id.* § 552.137(b).

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<sup>1</sup>The 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).

<sup>2</sup>Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

In summary; 1) DART must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy; 2) to the extent the individual whose personal information is at issue timely elected to withhold her personal information, DART must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code; 3) DART must withhold the personal e-mail address we have marked pursuant to section 552.137, unless the owner of the address affirmatively consented to its release. 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), 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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/eeg

Ref: ID# 383918

Enc. Submitted documents

c: Requestor  
(w/o enclosures)