



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2010

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

OR2010-12383

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# 390504.

Dallas Area Rapid Transit ("DART") received two requests from the same requestor for information pertaining to a specified accident.¹ 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. We have also considered comments submitted by the requestor's representative. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential. Medical records are confidential under the Medical Practice Act (the "MPA"), subtitle B of

¹You state that DART sought and received clarification of the requests for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See* Occ. Code § 159.002(c); Open Records Decision No. 565 at 7 (1990). Upon review, we find that the medical records, which we have marked, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 159.002(b) of the MPA, unless DART receives the required written consent for their release.

Section 552.101 of the Government Code also encompasses 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). The types of information considered highly intimate or 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. This office has also 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 Nos. 470 (1987) (information pertaining to illness from severe emotional and job-related stress protected by common-law privacy), 455 (1987) (information pertaining to prescription drugs, specific

illnesses, operations and procedures, and physical disabilities protected from disclosure). Upon review, we find that portions of the submitted information are highly intimate or embarrassing and of no legitimate public interest. Therefore, we conclude that DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that none of the remaining information is highly intimate or embarrassing, and it may not be withheld on the basis of common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 that this information be kept confidential under section 552.024 of the Government Code.² *See* Gov't Code §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). DART may only withhold information under section 552.117(a)(1) on behalf of a former or current employee who has made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. In this instance, we have marked the information within the remaining information that is generally subject to section 552.117. You do not inform this office whether the DART employee whose information we have marked elected to keep her personal information confidential before DART received the present request for information. Therefore, we must rule conditionally. If the individual whose personal information we have marked timely elected to withhold such information under section 552.024, the marked information must be withheld under section 552.117(a)(1). If the individual at issue did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).

We now address the arguments submitted by the requestor's representative. The requestor's representative contends that the information at issue is subject to release under section 550.065 of the Transportation Code. Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, however, the submitted information does not include an accident report form completed under chapter 550 of the Transportation Code. Therefore, DART need not

²The 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).

release any of the information at issue pursuant to section 550.065 of the Transportation Code.

The requestor's representative also argues that the information at issue is subject to release under section 552.023 of the Government Code. Under section 552.023, a person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Gov't Code § 552.023(a). However, section 552.023 does not apply where interests other than the person's privacy are being protected, such as the interests protected under the MPA. *See* Open Records Decision No. 565 (1990) (provisions of MPA are intended to protect more than just the privacy interests of the patient). Although section 552.101 of the Government Code in conjunction with common-law privacy and section 552.117 of the Government Code are intended to protect the privacy interests of individuals, in this instance, the information we have marked under sections 552.101 in conjunction with common-law privacy and section 552.117 does not pertain to the requestor's clients. Because the information we have marked under section 552.101 in conjunction with the MPA and common-law privacy and section 552.117 is not being protected on the basis of the privacy interests of the requestor's clients, the requestor does not have a special right of access to any of this information under section 552.023.

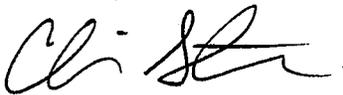
In summary, (1) DART must withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with section 159.002(b) of the MPA, unless DART receives the required written consent for their release; (2) DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) if the individual whose personal information we have marked timely elected to withhold such information under section 552.024, DART must withhold the marked information under section 552.117(a)(1) of the Government Code. The remaining information must be released to the requestor.³

³We note the remaining information contains a Texas driver's license number and a vehicle identification number that would be confidential with regard to the general public, but to which the requestor has a right of access under section 552.023 of the Government Code. As previously noted, section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a). We note that Open Records Decision No. 684 (2009) authorizes a governmental body to redact a Texas driver's license number under section 552.130 of the Government Code without the necessity of requesting an attorney general decision. Therefore, if DART receives another request for this information from an individual other than one with a right of access under section 552.023, DART is authorized to withhold the Texas driver's license number at issue under section 552.130 without the necessity of requesting an attorney general decision. However, because Open Records Decision No. 684 does not authorize the redaction of a vehicle identification number, should DART receive another request for this information from an individual other than one with a right of access under section 552.023, DART should again seek a decision 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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 390504

Enc. Submitted documents

c: Requestor
(w/o enclosures)