



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2010

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

OR2010-12681

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# 391331 (DART ORR # 7474).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to all collisions involving DART drivers during a specified time period. You state some of the requested information has been provided to the requestor. 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.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You claim the submitted spreadsheets are confidential under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 of the items of information specified by the statute. *Id.*

You state the submitted information “was derived from Texas Peace Officer’s Crash reports” completed pursuant to the Transportation Code. You contend that the submitted information is excepted under section 552.101 in conjunction with section 550.065 because the requestor did not provide any of the information required under section 550.065(c)(4). We note that as amended by the Seventy-fifth Legislature in section 13 of Senate Bill No. 1069, section 550.065(a) previously provided as follows:

(a) This section applies only to information that is held by the [Texas Department of Public Safety] or another governmental entity and relates to a motor vehicle accident, including:

(1) information reported under this chapter, Section 601.004, or Chapter 772, Health and Safety Code;

(2) information contained in a dispatch log, towing record, or a record of a 9-1-1 service provider; and

(3) the part of any other record that includes information relating to the date of the accident, the name of any person involved in the accident, or the specific location of the accident.

See Act of May 29, 1997, 75th Leg., R.S., ch. 1187, § 13, 1997 Tex. Gen. Laws 4575, 4582. The prior version of section 550.065 was held to be unconstitutional, however, and its enforcement was permanently enjoined. *See Texas Daily Newspaper Ass’n v. Cornyn*, No. 97-08930 (345th Dist. Ct., Travis County, Tex.) (Final Judgment and Permanent Injunction entered January 24, 2001). Among other findings, the court concluded the prior version of section 550.065 “impose[d] a wholesale ban on information that has traditionally been public[.]” *See id.* (Findings of Fact and Conclusions of Law entered January 24, 2001).

The Seventy-seventh Legislature modified the language of section 550.065(a) in House Bill No. 1544. *See* Act of May 25, 2001, 77th Leg., R.S., ch. 1032, § 5, 2001 Tex. Gen. Laws 2281, 2282. The legislative history of House Bill No. 1544 reflects the legislature intended to correct the deficiencies that caused the court to invalidate the previous version of the statute. Hearings on Tex. H.B. 1544 before the Senate Committee on State Affairs, 77th Leg. R.S. (May 10, 2001); *see also* Open Records Decision No. 643 at 2 (1996) (citing *Acker v. Texas Water Comm’n*, 790 S.W.2d 299 (Tex. 1990)) (legislature is presumed to have enacted a statute with complete knowledge of and reference to existing law). Furthermore, there is no legislative indication the modified section 550.065 was intended to encompass any records other than those prepared in accordance with chapter 550 or

section 601.004 of the Transportation Code. Hearings on Tex. H.B. 1544; *see also* Open Records Decision No. 643 at 2-3 (citing *Buckner Glass & Mirror, Inc. v. T.A. Pritchard Co.*, 697 S.W.2d 712 (Tex. App.—Corpus Christi 1985, no writ)) (when legislature amends a law, it is presumed to have intended to change the law). Accordingly, because the submitted information does not constitute accident report forms completed pursuant to chapter 550 or section 601.004 of the Transportation Code, we conclude no portion of the submitted information is made confidential by section 550.065. Thus, none of the submitted information is excepted from disclosure under section 552.101 on that basis.

We note that the submitted information may contain the home addresses and home telephone numbers of DART employees which may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number regardless of whether the peace officer made an election under section 552.024 of the Government Code.² Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, it appears that the submitted spreadsheets may contain the home addresses and home telephone numbers of DART police officers. It is unclear whether these individuals are currently licensed peace officers as defined by article 2.12. It is also unclear whether the information listed is actually the individuals' home addresses and home telephone numbers. Accordingly, if any of the individuals at issue are current or former DART police officers who are currently licensed peace officers as defined by article 2.12 and the information at issue consists of their home addresses or home telephone numbers, then DART must withhold that information under section 552.117(a)(2) of the Government Code.

If any of the information at issue pertains to former or current DART employees who are not currently licensed peace officers, then their home addresses and home telephone numbers may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See id.* § 552.117(a)(1). 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 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 employee who did not timely request under section 552.024 the information be kept confidential. It is unclear whether any of the individuals at issue are current or former DART

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

employees. It is also unclear whether the information pertaining to these individuals are actually their home addresses and home telephone numbers. Therefore, to the extent the information at issue consists of the home addresses and telephone numbers of current or former DART employees who timely requested confidentiality under section 552.024, DART must withhold such information under section 552.117(a)(1).

If any licensed peace officers listed in the submitted information were not employed by DART, their home addresses and telephone numbers may be subject to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). If the licensed peace officers at issue were not employed by DART, DART must only withhold their home addresses and telephone numbers if those licensed peace officers elect to restrict access to their information in accordance with section 552.1175(b). If no election is made, DART may not withhold those officers' home addresses and telephone numbers under section 552.1175.

We also note the submitted information contains Texas motor vehicle record information subject to section 552.130 of the Government Code. Section 552.130 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 [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). Upon review, we find that DART must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We note that a portion of the remaining information may be excepted from disclosure under section 552.136 of the Government Code. Section 552.136 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.” *Id.* § 552.136(b). It is unclear whether some of the remaining information consists of insurance policy numbers. Accordingly, we must rule conditionally. To the extent the remaining information contains insurance policy numbers, DART must withhold the insurance policy numbers under section 552.136 of the Government Code.³ However, if none of the remaining information consists of insurance policy numbers, then none of the remaining information may be withheld under section 552.136.

In summary, if any of the information at issue consists of the home addresses and home telephone numbers of current or former DART police officers who are currently licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then DART must withhold that information under section 552.117(a)(2) of the Government Code. To the extent the information at issue consists of the home addresses and telephone numbers of current or former DART employees who timely requested confidentiality under section 552.024 of the Government Code, DART must withhold such information under section 552.117(a)(1) of the Government Code. If the licensed peace officers at issue were not employed by DART, DART must withhold their home addresses and telephone numbers if those officers elect to restrict access to their information in accordance with section 552.1175(b) of the Government Code. DART must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the remaining information contains insurance policy numbers, DART must withhold the insurance policy numbers under section 552.136 of the Government Code. As no further exceptions are raised, DART must release the remaining information.

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

³We 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 Texas driver’s license numbers and 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.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 391331

Enc. Submitted documents

c: Requestor
(w/o enclosures)