



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 25, 2010

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

OR2010-12926

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# 391674 (MTA No. 2010-0537).

The Metropolitan Transit Authority (the "authority") received a request for information pertaining to a specified investigation. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation of alleged employee misconduct made by the authority, which is expressly

public under section 552.022(a)(1). A completed report must be released under section 552.022(a)(1) unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. The authority does not claim section 552.108. Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 552 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *see also* 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(a)(1). Consequently, the submitted information may not be withheld under section 552.103 of the Government Code. However, we note sections 552.117 and 552.137 of the Government Code are "other law" for section 552.022.¹ Accordingly, we will consider your argument under section 552.117 and the applicability of section 552.137 to the submitted information.

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 official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117, .024. 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 official or 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. You inform us, and provide documentation showing, that the employees at issue timely elected confidentiality under section 552.024. Therefore, the authority must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

We note that some of the remaining information consists of a personal e-mail address that is subject to section 552.137 of the Government Code. 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* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the authority must withhold the e-mail address

¹The 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).

we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.²

In summary, the authority must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The authority must withhold the marked e-mail address under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure. 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 391674

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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 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.