



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 27, 2010

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

OR2010-16300

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# 398177 (DART ORR 7614).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to report number D84661, regarding a June 23, 2010 accident involving a named individual. You state DART has released a portion of the responsive information to the requestor. You claim 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 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *See id.* at 681-82.

You claim portions of the submitted information reveal medical details that are highly intimate or embarrassing and of no legitimate public interest. This office has 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) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This named individual was aboard a DART bus when it was in an accident, resulting in injuries to the named individual. The information reveals the named individual now seeks DART to pay for medical services related to that injury. Therefore, in this instance, we find the nature of the named individual's injuries and some information about her received medical treatment are of legitimate public interest. Accordingly, we conclude most of the information that would ordinarily be withheld as private medical information is of legitimate public interest in this case, and may not be withheld on the basis of common-law privacy. However, we agree the particular drugs prescribed this individual consist of private medical details that are of no legitimate public interest. However, the request reveals the requestor is an attorney who represents the named individual whose private medical information is at issue. Section 552.023 of the Government Code 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); *see* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when an individual or authorized representative asks governmental body to provide information concerning that individual). Consequently, the prescription drug information may not be withheld from this requestor on the basis of his client's common-law privacy. As you raise no other exceptions to disclosure, the submitted information must be released in its entirety.¹

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,

¹We note the information being released includes information to which the requestor has a right of access under section 552.023 of the Government Code. Because this information would be confidential with respect to the general public, DART must again seek a ruling from this office if it receives another request for this information from another requestor.

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,

A handwritten signature in black ink, appearing to read "Bob Davis", with a stylized flourish at the end.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

Ref: ID# 398177

Enc. Submitted documents

c: Requestor
(w/o enclosures)