



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2011

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

OR2011-00131

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# 405094 (DART ORR # 7787).

Dallas Area Rapid Transit ("DART") received a request for information relating to an accident. You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.

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. This exception encompasses constitutional and common-law rights to privacy. Constitutional privacy under section 552.101 encompasses two types of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the

information. See ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492).

Common-law privacy under section 552.101 protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. 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 elements of this test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

You contend the addresses and telephone numbers of two juveniles are protected by constitutional and common-law privacy. The juveniles concerned were passengers in a vehicle involved in an accident. We note this office has concluded public disclosure of an individual's home address and telephone number is not an invasion of privacy. See Open Records Decision No. 554 at 3 (1990); see also ORD 455 at 7 (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). We find you have not demonstrated that the addresses and telephone numbers at issue fall within any of the constitutional zones of privacy or that the juveniles' privacy interests in the addresses and telephone numbers outweigh the public's interest in the information. Likewise, you have not demonstrated that the juveniles' addresses and telephone numbers are highly intimate or embarrassing information that is not a matter of legitimate public concern. We therefore conclude DART may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with constitutional or common-law privacy.

We note DART may be required to withhold some of the submitted information under section 552.130 of the Government Code.¹ This section excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document. See Gov't Code § 552.130(a)(2)-(3). The Texas motor vehicle and personal identification information we have marked is generally subject to section 552.130. In this instance, however, the requestor may be an authorized representative of the individual to whom the marked information pertains. Because section 552.130 protects personal privacy, the requestor has a right of access to the individual's motor vehicle and personal identification information if he is the individual's authorized representative.

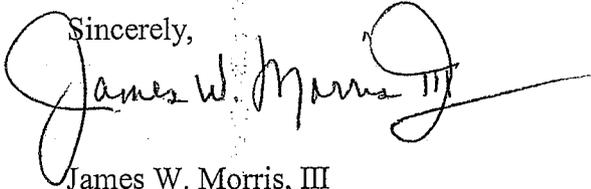
¹This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

See id. § 552.023(a).² Thus, if the requestor is the individual's authorized representative, her motor vehicle and personal identification information may not be withheld under section 552.130 and must be released. *See* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). If the requestor is not the individual's personal representative, DART must withhold the marked motor vehicle and personal identification information under section 552.130 of the Government Code.³ In either event, the rest of the submitted 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/vb

Ref: ID# 405094

Enc: Submitted documents

c: Requestor
(w/o enclosures)

²Section 552.023 provides in part 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).

³We note this office issued Open Records Decision No. 684 (2009), a previous determination authorizing all governmental bodies to withhold ten categories of information, including a Texas license plate number under section 552.130, without the necessity of requesting an attorney general decision.