ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 3, 2011

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

OR2011-03010

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# 412078 (DART ORR #7909).

The Dallas Area Rapid Transit ("DART") received a request for the pay stubs of a named employee from November and December of 2009. You claim 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 submitted information.

You have submitted check stub reports for checks issued in January, February, and March of 2010. This information is not responsive to the request for information as it does not fall within the specified time periods for the requested pay stubs. This ruling does not address the public availability of any information that is not responsive to the request, and DART is not required to release this information in response to this request.

You assert the submitted responsive information is excepted from disclosure under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy. Common-law privacy 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). Prior decisions of this office have found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (personal financial information includes choice of particular insurance carrier). The submitted documents contain personal financial information, and the public does not have a legitimate interest in it. *See* Open Records Decision Nos. 620 (1993), 600. We have marked the information that DART must withhold under section 552.101 in conjunction with common-law privacy. Upon review, however, we find the remaining information is not highly intimate or embarrassing; therefore, the remaining information is not confidential under common-law privacy, and DART may not withhold it under section 552.101 on that ground.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5; *see Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). After review of the remaining information, we find it does not contain information that is confidential under constitutional privacy; therefore, DART may not withhold it under section 552.101 on that ground.

To conclude, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. DART must release the remaining responsive 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

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 L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 412078

Enc. Submitted documents

c: Requestor
(w/o enclosures)