



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 7, 2011

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

OR2011-03167

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# 410708 (DART ORR# 7882).

Dallas Area Rapid Transit ("DART") received a request for insurance information pertaining to a named deceased employee. You claim that the requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from a member of deceased employee's family. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. 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). The type of information considered intimate or embarrassing

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<sup>1</sup>The 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).

by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Further, we note the beneficiary of an insurance policy has a separate right to privacy and information that would reveal a beneficiary's identity is protected by common-law privacy. However, because privacy is a personal right that lapses at death, the common-law right to privacy does not encompass information that relates only to a deceased individual. Accordingly, information pertaining solely to a deceased individual may not be withheld on common-law privacy grounds. See *Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Open Records Decision No. 272 at 1 (1981) (privacy rights lapse upon death).

The requestor represents an individual whose privacy interests are at issue. Therefore, pursuant to section 552.023 of the Government Code, the requestor has a right of access to information pertaining to his client, and it may not be withheld from him under section 552.101 on the basis of common-law privacy. See Gov't Code § 552.023(b) ("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"). Upon review we find that the information we have marked, which does not pertain to the requestor's client, is highly intimate or embarrassing and not of legitimate public concern. Therefore, DART must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. We note remaining information pertains solely to the deceased employee and may not be withheld under section 552.101 on the basis of common-law privacy.

You claim portions of the remaining information are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). However, we note section 552.102(a) protects the privacy interests of individuals, and the right the privacy lapses at death. See *Moore*, 587 S.W.2d at 491. Upon review, we find none of the remaining information is excepted under section 552.102(a) of the Government Code, and none of the remaining information may be withheld on that basis.

We note portions of the remaining information are within the scope of section 552.117 of the Government Code. Section 552.117(a)(1) 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 the information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. We note that section 552.117(a)(1) is not applicable to a former spouse or the fact that a governmental employee has been divorced. The submitted information contains personal information pertaining to a deceased employee. Because the protection afforded by section 552.117 includes "current or former" officials or employees, we note that the protection generally does not lapse at death, as it is also intended to protect the privacy of the employee's family members. We note, however, because the protection of social security numbers under section 552.117 is intended solely to protect the privacy of the employee, it lapses at death. *See Moore*, 589 S.W.2d 489, 491; *see also* Attorney General Opinions JM-229; H-917. 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)*.

As previously noted, the requestor is attorney for a family member of the deceased employee. Therefore, pursuant to section 552.023 of the Government Code, the requestor has a right of access to information pertaining to his client. *See Gov't Code § 552.023(b)*. We have marked the personal information of the deceased employee that does not pertain to the requestor's client and does not consist of the deceased employee's social security number. You do not inform us whether this employee requested confidentiality pursuant to section 552.024. Accordingly, if the deceased employee timely elected confidentiality, DART must withhold the information we have marked under section 552.117(a)(1). If the deceased employee did not timely elect confidentiality for the marked information, none of this information may be withheld under section 552.117(a)(1).

We next note a portion of the remaining information is subject to section 552.136 of the Government Code. Section 552.136 states "[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." *Gov't Code § 552.136*. Accordingly, we find DART must withhold the insurance policy numbers we have marked under section 552.136 of the Government Code.<sup>2</sup>

In summary, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the deceased employee timely elected confidentiality under section 552.024 of the Government Code, DART must withhold the information we have marked under section 552.117(a)(1) of the

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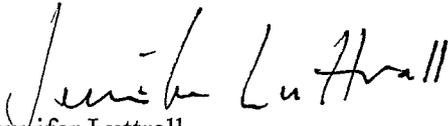
<sup>2</sup>We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code. DART must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.<sup>3</sup>

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](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# 410708

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Family Member  
(w/o enclosures)

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<sup>3</sup>We note that some of the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual or authorized representative asks governmental body to provide information concerning that individual). Thus, if DART receives another request for this particular information from a different requestor, then DART should again seek a decision from this office.