



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 29, 2011

Ms. Anne M. Constantine  
Legal Counsel  
Dallas/Fort Worth International Airport  
P.O. Box 619428  
DFW Airport, Texas 75261

OR2011-09272

Dear Ms. Constantine:

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# 422335.

The Dallas/Fort Worth International Airport Board (the "airport") received a request for seven categories of information related to accidents, maintenance reports, and procedures at the airport. You state the airport will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup> We have also received comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. We also note you have marked a social security number in the submitted documents. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Initially, we note some of the submitted information consists of completed reports that are subject to section 552.022 of the Government Code. Under section 552.022(a)(1), a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you assert this information is excepted under section 552.103 of the Government Code, this section is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *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. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, the airport may not withhold these completed reports under section 552.103.

We must next address the airport's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). You state the airport received the request for information on April 11, 2011. Thus, the airport's ten-business-day deadline to request a ruling from this office under section 552.301(b) was April 25, 2011, and its fifteen-business-day deadline to submit the information at issue under section 552.301(e) was May 2, 2011. However, you sent your request for a ruling by facsimile transmission to this office on April 27, 2011. Although you also mailed a copy of this request for a ruling to this office, the envelope in which the request for a ruling was submitted is postmarked April 28, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). In addition, we note you did not mail some of the requested information to this office until May 5, 2011. *See id.* Accordingly, the airport failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests; thus, the airport's claim under section 552.103 is not a compelling reason to overcome the presumption of openness. *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. 665 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the airport may not withhold any of the submitted information under section 552.103 of the Government Code. However, sections 552.101, 552.130, and 552.137 of the Government Code can provide compelling reasons to overcome this presumption.<sup>2</sup> Therefore, we will consider whether these sections require you to withhold the submitted information.

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 section encompasses information protected by other statutes, including section 773.091 of the Health and Safety Code, which provides, in part

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services [(“EMS”)] personnel or by a physician providing medical supervision that are created by the [EMS] personnel or physician or maintained by an [EMS] provider are confidential and privileged and may not be disclosed except as provided by this chapter.

...

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Health & Safety Code § 773.091(b), (g). Except for the information specified in section 773.091(g), EMS records are deemed confidential and may be released only in accordance with chapter 773 of the Health & Safety Code. *See id.* §§ 773.091-.094. A portion of the submitted information consists of records created by EMS personnel. Upon review, we find section 773.091 is applicable to the information we have marked. Thus, with the exception of the information subject to section 773.091(g) of the Health and Safety Code, the airport must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code.

Section 552.130(a) of the Government Code provides the following:

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The airport must withhold the motor vehicle record information we have marked under section 552.130.

Section 552.137 of the Government Code 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). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and you do not inform us a member of the public has affirmatively consented to its release. Therefore, the airport must withhold the e-mail address you have marked under section 552.137.

In summary, except for the information subject to section 773.091(g) of the Health and Safety Code, the airport must withhold the EMS records we have marked under section 552.101 of the Government Code in conjunction with section 773.091(b) of the Health and Safety Code. The airport must also withhold the information marked under sections 552.130 and 552.137 of the Government Code.<sup>3</sup> The airport must release the remaining information.

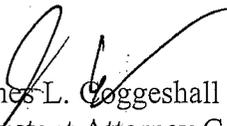
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<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license and license plate number under section 552.130 of Government Code and an e-mail address of a member of public under section 552.137 of Government Code, without the necessity of requesting an attorney general opinion.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/eb

Ref: ID# 422335

Enc. Submitted documents

c: Requestor  
(w/o enclosures)