



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2011

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

OR2011-10387

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# 425641 (DART ORR # 8236).

Dallas Area Rapid Transit ("DART") received two requests for internal affairs investigations pertaining to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted information consists of a completed internal affairs investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Pursuant to section 552.022(a)(1), a completed evaluation is expressly public unless it is either excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you raise sections 552.103 and 552.111 of the Government Code, these exceptions are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See id.* § 552.007; *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 Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103), 470 at 7 (1987) (governmental body may

waive statutory predecessor to section 552.111 deliberative process). As such, sections 552.103 and 552.111 are not “other law” that makes information confidential for the purposes of section 552.022. Therefore, DART may not withhold the submitted information under sections 552.103 and 552.111 of the Government Code. However, pursuant to section 552.022(a)(1), we will consider your claim under section 552.108 of the Government Code. Further, as section 552.101 of the Government Code constitutes “other law” that makes information confidential for the purposes of section 552.022, we will also consider your arguments under that section.

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 that other statutes make confidential, such as section 58.007 of the Family Code. Section 58.007 provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007. You state DART police report DTC10001566 involves a sixteen year old who was issued a criminal trespass warning. Accordingly, we agree DART police report DTC10001566 constitutes a law enforcement record of a juvenile who engaged in delinquent conduct after September 1, 1997. *See id.* § 51.03(a) (defining “delinquent conduct” for purposes of Fam. Code § 58.007); *see also* § 51.02(2) (defining a “child” as a person who is ten years of age or older and under seventeen years of age for purposes of section 58.007). It does not appear that any of the exceptions in section 58.007 of the Family Code apply. Accordingly, DART police report DTC10001566, which we have marked, must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.¹

¹As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

You claim the remaining submitted information is excepted under section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The information you seek to withhold under this exception consists of an internal affairs investigation. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Ellen*, 840 S.W.2d at 525-26 (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You state, however, the internal affairs investigation is the basis of a class C misdemeanor offense for public intoxication that is pending prosecution with the Dallas County Justice of the Peace court. You further state the internal affairs investigation directly relates to the pending case and release of the information would interfere with the prosecution. Based on your representation and our review, we conclude section 552.108(a)(1) is applicable to the remaining information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, DART may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, which must be released, DART may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/em

Ref: ID# 425641

Enc. Submitted documents

c: Requestor
(w/o enclosures)