



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2011

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

OR2011-10783

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# 425071 (DART ORR 8212).

The Dallas Area Rapid Transit ("DART") received a request for (1) policies, procedures, and guidelines pertaining to requesting employment-related background checks; (2) the most recent contract and request for proposals for employment-related background checks, excluding usernames and passwords; (3) documents pertaining to the evaluation of proposals submitted in response to the most recent request for proposals; (4) the winning bidder's proposal and any additional information submitted by the winning bidder; (5) invoices received in the last six months from any vendor for employment-related background checks; and (6) the last twenty background checks performed for DART. You state DART is releasing some of the requested information. You state DART does not maintain any information responsive to item (4) above. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. You also state release of this information may implicate the proprietary interests of Quick Search, which you have notified of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Initially, we note personally identifiable information within the submitted documents, including names, dates of birth, social security numbers, addresses, and driver's license numbers, is not responsive to the instant request for information because the requestor has excluded that information from the scope of the request. 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 such information in response to this request.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Quick Search explaining why its submitted information should not be released. Therefore, we have no basis to conclude that Quick Search has a protected proprietary interest in the submitted information, and DART may not withhold it on that basis. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3.

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 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 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 a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

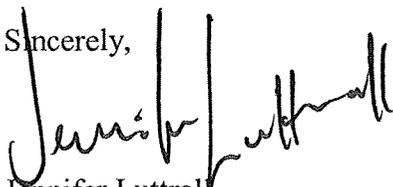
Upon review, we find no portion of the responsive information consists of identifying information of an individual for purposes of common-law privacy. Thus, because the individuals to whom the responsive information pertains have been de-identified, we find these individuals' privacy interests have been protected. Therefore, we find you have not demonstrated how the responsive information is highly intimate or embarrassing and not of legitimate public concern, and the responsive information may not be withheld under section 552.101 in conjunction with common-law privacy.

We note portions of the responsive information are subject to section 552.130 of the Government Code.¹ Section 552.130 excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." 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). Accordingly, DART must withhold the motor vehicle record information we have marked pursuant to section 552.130 of the Government Code. 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 425071

Enc. Submitted documents

c: Requestor
(w/o enclosures)