



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2011

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

OR2011-15426

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# 433800 (DART ORR# 8400).

Dallas Area Rapid Transit ("DART") received a request for the name and statement of a witness interviewed in relation to an incident that lead to the requestor's employment termination. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code, which states, in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

¹In subsequent communications with this office you withdrew your claim under section 552.108 of the Government Code.

(1) 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). The submitted information is part of a completed investigation conducted by the DART Police Department. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You claim the submitted information is excepted under section 552.103 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interest 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), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). As such, it is not "other law" that makes information confidential for the purposes of section 552.022. Consequently, DART may not withhold the submitted information under section 552.103 of the Government Code. You also claim the submitted information is excepted under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The common-law informer's privilege is "other law" for the purpose of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Envtl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). Because information subject to section 552.022(a)(1) may be withheld under section 552.101 in conjunction with the common-law informer's privilege, we will consider the applicability of this provision to 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 exception encompasses information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. However, witnesses who provide information in the course of an investigation, but do not make the initial report of the violation, are not informants for purposes of claiming the informer's privilege.

You seek to withhold the submitted police incident report narrative and witness statement under the informer's privilege. You indicate the submitted information identifies an individual who reported a possible violation of criminal law to a DART police officer. The information reflects, however, the alleged crime was directly observed by the officer, not reported to him by anyone. The individual whose identity you seek to withhold was involved in the incident and interviewed by the officer as a witness to the alleged crime. Therefore, we find you failed to demonstrate the submitted information identifies an individual who reported a possible violation of criminal law to a law enforcement entity. Consequently, DART may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. As you have not claimed any other exceptions to disclosure, DART must release the submitted 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,



Karen Hattaway
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 433800

Enc. Submitted documents

c: Requestor
(w/o enclosures)