



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2012

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

OR2012-01442

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# 443770 (DART ORR No. 8623).

The Dallas Area Rapid Transit ("DART") received a request for a specified incident report, a specified claims adjuster's report, and all previous complaints filed by the requestor. You claim that 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 information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note you have submitted information in the ClaimSearch Match Report Summary, which we have marked, that is not responsive to the instant request because it does not pertain to the requestor. This ruling does not address the public availability of non-responsive information, and DART is not required to release non-responsive information in response to this request.

Next, we note you have not submitted information responsive to the request for all previous complaints filed by the requestor. To the extent information responsive to the remainder of the request existed on the date DART received the request, we assume you have released it. *See Open Records Decision No. 664 (2000)* (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), .302.*

We note the submitted information consists of a completed investigation subject to section 552.022 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,” unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. *Id.* § 552.022(a)(1). We note you do not raise section 552.108. Thus, DART may withhold the submitted information only to the extent it is made confidential under the Act or other law. Although you raise section 552.103 of the Government Code, this is a discretionary exception and does not make information confidential under the Act. *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 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 473 (1987) (section 552.103 may be waived). Accordingly, DART may not withhold any of the submitted information under that section. However, because sections 552.117, 552.130, and 552.136 of the Government Code make information confidential for purposes of 552.022(a)(1), we will address the applicability of these sections to the submitted information.¹

Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, DART may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. To the extent the employee timely elected to keep such information confidential under section 552.024, DART must withhold the information we have marked under section 552.117 of the Government Code. If the employee did not make a timely election under section 552.024, DART may not withhold the information we have marked under section 552.117 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, title, or registration issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130(a)(1), (2). We note the submitted information includes the requestor’s motor vehicle information, which DART would be required to withhold from the general public under section 552.130 of the Government Code. Because section 552.130 protects personal privacy, the requestor has a right of access to her motor vehicle information under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision

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

No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, DART must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

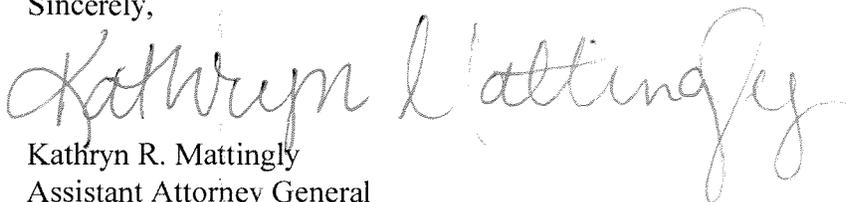
Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). This office has determined an insurance policy number is an access device for purposes of section 552.136. Therefore, DART must withhold the insurance policy numbers, which we have marked, under section 552.136.

In summary, DART must withhold (1) the information we have marked under section 552.117 of the Government Code, to the extent the employee made a timely election under section 552.024, (2) the motor vehicle record information we have marked under section 552.130 of the Government Code, and (3) the insurance policy numbers we have marked under section 552.136 of the Government Code. The remaining information must be released to the requestor.²

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

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² We note the submitted information also includes information which is confidential with respect to the general public. However, the requestor has a special right of access to the information. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles). Thus, DART must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 443770

Enc. Submitted documents

c: Requestor
(w/o enclosures)