



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2012

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

OR2012-04081

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# 448106 (DART ORR Nos. 8724 and 8729).

Dallas Area Rapid Transit ("DART") received two requests from the same requestor for information submitted to DART by Kiewit, Stacy and Witbeck, Reyes, Parsons ("KSWRP") in connection with solicitation number P-1018691, Irving-3 Design-Build.¹ Although you take no position on its public availability, you believe the submitted information may implicate the proprietary interests of KSWRP. You inform us KSWRP was notified of the request for the submitted information and of its right to submit arguments to this office as to why the information should not be released.² We have reviewed the information you submitted.

An interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no

¹You state, and have provided documentation confirming, DART requested and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 384 (Tex. 2010) (when governmental entity, acting in good faith, requests clarification or narrowing of unclear or over-broad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

correspondence from KSWRP. Therefore, as KSWRP has not demonstrated any of the information at issue is proprietary for purposes of the Act, DART may not withhold any of the submitted information on the basis of any interest KSWRP may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999).

We note some of the submitted information falls within the scope of sections 552.101, 552.117, and 552.136 of the Government Code.³ Section 552.101 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 common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We conclude the medical information we have marked is highly intimate or embarrassing and not a matter of legitimate public interest. Therefore, DART must withhold that information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code 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. *See* Gov’t Code §§ 552.024, 117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee of a governmental body who requested confidentiality for the information under section 552.024 of the Government Code prior to the date on which the information was requested. Therefore, DART must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the current or former employee to whom the information pertains timely requested confidentiality for the information under section 552.024 of the Government Code.

Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that

³This office will raise sections 552.101, 552.117, and 552.136 on behalf of a governmental body, as these sections are mandatory exceptions to disclosure. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). This office has determined an insurance policy number is an access device for purposes of section 552.136. DART must withhold the bank account and insurance policy numbers we have marked under section 552.136 of the Government Code.

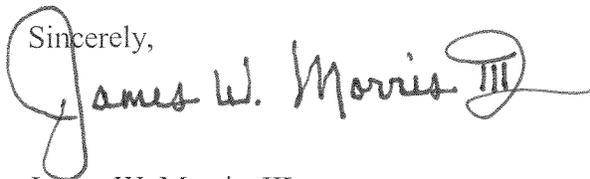
Lastly, we note some of the submitted information appears to be subject to copyright law. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See* Open Records Decision No. 180 at 3 (1977); *see also* Open Records Decision No. 109 (1975). A custodian of public records also must comply with copyright law, however, and is not required to furnish copies of records that are copyrighted. *See* ORD 180 at 3. A member of the public who wishes to make copies of copyrighted materials must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, DART must withhold (1) the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under section 552.117(a)(1) of the Government Code if the current or former employee to whom the information pertains timely requested confidentiality for the information under section 552.024 of the Government Code; and (3) the bank account and insurance policy numbers we have marked under section 552.136 of the Government Code. DART must release the rest of the submitted information but may only release copyrighted information in accordance with copyright law.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J" and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 448106

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Mr. Steve Medina
KSWRP
8700 Freeport Parkway, Suite 160
Irving, Texas 75063
(w/o enclosures)