



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 21, 2012

Mr. David C. Schulze  
Interim General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2012-15103

Dear Mr. Schulze:

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# 465639 (DART ORR 9142).

The Dallas Area Rapid Transit ("DART") received a request for certain recorded statements, records received from certain individuals, and everything in the requestor's husband's file. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted any recorded statements or records received from certain individuals. To the extent information responsive to this portion of the request existed on the date DART received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* 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).

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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 types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, this office has stated that there is a legitimate public interest in the qualifications of persons who seek public employment, as well as the hiring practices of governmental entities. *See generally* Open Records Decisions Nos. 542 at 5 (1990) (information regarding the qualifications of a public employee is of legitimate concern to the public), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 455 at 9 (1987) (public has a legitimate interest in knowing applicants' past employment record and their suitability for the employment position in question). Upon review, we find no portion of the submitted information is highly intimate or embarrassing. Thus, DART may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.122(b) of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the submitted application package which includes the candidate selection form, score sheet, interview guide, and interview questions and responses for DART's Traction Power Maintainer under section 552.122 of the Government Code. You state release of the submitted information would provide an unfair advantage to future applicants for this position, thereby impairing DART's ability to evaluate qualified individuals. Upon review, we find that the information we have marked qualifies as test

items for the purposes of section 552.122(b). We also find that release of the answers to these questions, which we have also marked, would tend to reveal the questions themselves. Therefore, DART may withhold the information we have marked under section 552.122(b) of the Government Code. However, the remaining questions are general questions or statements evaluating the applicant's individual abilities, personal opinions, general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of the applicant. We find you have failed to explain how the remaining submitted information constitutes a test item for purposes of section 552.122. Accordingly, we determine the remaining submitted information does not consist of test items under section 552.122(b) and may not be withheld on that basis. As no further exceptions to disclosure have been raised, the remaining information must be released.

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 465639

Enc. Submitted documents

c: Requestor  
(w/o enclosures)