



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2012

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

OR2012-16938

Dear Mr. Carlson:

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# 469637 (ORR 9233).

Dallas Area Rapid Transit ("DART") received a request for disciplinary records regarding a named DART employee. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you submitted.<sup>1</sup>

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. You claim section 552.101 in conjunction with 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. *See id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information related 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

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<sup>1</sup>This letter ruling assumes the submitted sample of responsive information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes DART to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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).

You seek to withhold a DART employee's disciplinary records on privacy grounds. We note the public generally has a legitimate interest in information involving public employees and their performance in the workplace. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 473 at 3 (1987) (fact of public employee's receipt of less than perfect or even very bad evaluation not private), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 5 (1986) (public has legitimate interest in knowing reasons for public employee's dismissal, demotion, or promotion), 405 at 2 (manner in which public employee's job was performed cannot be said to be of minimal public interest). We therefore conclude the information at issue is not protected by common-law privacy and may not be withheld on that basis under section 552.101 of the Government Code. Thus, as DART claims no other exception to disclosure, the submitted information must be released in its entirety.

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,



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

JWM/bhf

Ref: ID# 469637

Enc: Submitted documents

c: Requestor  
(w/o enclosures)