



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2012

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

OR2012-17554

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# 472349 (DART ORR #9297).

Dallas Area Rapid Transit ("DART") received a request for (1) information pertaining to two named individuals and which employees referred them and (2) the qualifications and names of the top ten candidates for the position of Senior Human Resources Operations Manager. You state DART has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed 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. 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. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See Open Records Decision No. 455 (1987)* (prescription drugs, illnesses, operations, and handicaps). However, this office has found information involving public officials and employees and public employment is generally not protected by common-law privacy because the public has a legitimate interest in such information. *See, e.g., Open Records Decision Nos. 470 at 4 (1987)* (public has legitimate interest in job qualifications and performance of public employees), 455 (public employee's job performance or abilities generally not protected by privacy), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental

employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 on the basis of common-law privacy.

We note some of the remaining submitted information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) 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)(1). We further note section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for information is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Therefore, if the employees whose information is at issue timely requested confidentiality under section 552.024, DART must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employees whose information is at issue did not timely request confidentiality under section 552.024, DART may not withhold the marked information under section 552.117(a)(1).²

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license issued by a Texas agency, or an agency of another state or country, is excepted from public release. Gov't Code § 552.130(a)(1). Upon review, we find DART must withhold the driver's license information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with

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).

²Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

a governmental body," unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be a type specifically excluded by section 552.137(c). Accordingly, DART must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release.

In summary, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, DART must withhold the information we have marked under section 552.117(a)(1) of the Government Code. DART must withhold the driver's license information we have marked under section 552.130 of the Government Code. DART must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release. DART must release the remaining 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bhf

Ref: ID# 472349

Enc. Submitted documents

c: Requestor
(w/o enclosures)