



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 8, 2013

Ms. Halfreda Anderson-Nelson  
Senior Assistant General Counsel  
Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163

OR2013-03984

Dear Ms. Anderson-Nelson:

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# 482317 (DART ORR 9536).

Dallas Area Rapid Transit ("DART") received a request for any and all documents in a specified administrative review file from a specified time period. You state DART has released some information to the requestor. You claim some of 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. This section encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas 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. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. The public generally has a legitimate interest in public employment and public employees, particularly those who are involved in law enforcement. *See Open Records Decision No. 444 at 6 (1986)* (public

has genuine interest in information concerning law enforcement employee's qualifications and performance and circumstances of his termination or resignation); *see also* 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), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs). Upon review, we find portions of the submitted information, which we have marked, are 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. DART has failed to demonstrate any of the remaining information is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>1</sup> Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. 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). Upon review, we find DART must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code if the cellular telephone service is not paid for by a governmental body.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;

...

(3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

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<sup>1</sup>The 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).

Gov't Code § 552.130(a)(1), (3). Upon review, we find DART must withhold the information we have marked under section 552.130 of the Government Code.

In summary, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. DART must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code if the cellular telephone service is not paid for by a governmental body. DART must withhold the information we have marked under section 552.130 of the Government Code. DART must release the remaining information.<sup>2</sup>

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/tch

Ref: ID# 482317

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>Because the requestor has a right of access to some of the information being released, DART must again seek a decision from this office if it receives another request for the same information from another requestor. *See* Gov't Code § 552.023.