



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2013

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

OR2013-14633

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# 496926 (DART ORR No. 9961).

Dallas Area Rapid Transit ("DART") received a request for all information in the requestor's personnel file. You state you will release some of the requested information upon receipt of payment. 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.

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 exception encompasses information that other statutes make confidential. You state portions of the submitted information are subject to the Medical Practice Act (the "MPA"), which governs access to medical records. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). The information we have marked consists of medical records subject to the MPA. DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code. However, none of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, DART may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

Section 552.122 of the Government Code exempts 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 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. *Id.* 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 state the remaining information contains the Bus Operator Examination used by DART’s transportation department. You assert release of the information at issue would provide an unfair advantage to future applicants, requiring DART to change its interview questions in order to secure the confidentiality of the testing requirements for the position at issue. Based on your representations and our review, we find some of the examination questions, which we have marked, qualify as test items under section 552.122(b) of the Government Code. We also find the release of the corresponding answers for the marked examination questions would tend to reveal the question itself. Accordingly, DART may withhold the questions and corresponding answers we have marked under section 552.122(b)

of the Government Code. However, the remaining information evaluates the applicant's individual ability, personal opinions, and subjective ability to respond to particular situations, and does not test any specific knowledge. Therefore, we conclude DART has not demonstrated the remaining information at issue consists of test items subject to section 552.122(b) of the Government Code, and DART may not withhold it on that basis.

In summary, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. DART may withhold the information we have marked under section 552.122(b) of the Government Code. DART must release the remaining information to the requestor.¹

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 496926

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note some of the information being released contains information to which the requestor has a right of access. See Gov't Code § 552.023. Because such information may be confidential with respect to the general public, if DART receives another request for this information from a different requestor, DART must again seek a ruling from this office.