



February 26, 1999

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

OR99-0555

Dear Mr Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123404.

The Dallas Area Rapid Transit ("DART") received a request for information relating to a particular contract award. You advise that DART has no documents responsive to item 6 of the request and that it has released information responsive to the other parts of the request except for item 3 thereof, which seeks the "names and addresses of the members of the Selection Committee." We understand you to seek to withhold the names and addresses of the Selection Committee members under sections 552.101, 552.102, and 552.104 of the Government Code.

Section 552.104 permits withholding "information that if released would give advantage to a competitor or bidder." Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.*, Open Records Decision No. 463 (1987). Governmental bodies may withhold this type of information while the governmental officials are in the process of interpreting the proposals and the competitors are free to furnish additional information. *Cf.* Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect, Open Records Decision Nos. 306 (1982), 184 (1978), or where no contract is awarded. Open Records Decision No. 201 (1978). In this instance, you have advised that the contract to which the information at issue pertains has been awarded. In our opinion, the information may not be withheld under section 552.104.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Section 552.102(a) protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee’s designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees’ personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person’s *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ *ref’d n.r.e.*). Privacy under section 552.102(a) is less broad than common law privacy under section 552.101, because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977). We do not believe that the names and addresses of Selection Committee members may be withheld under section 552.101 or 552.102.

The addresses in question may, however, be subject to sections 552.024 and 552.117. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. You must withhold the address of a Selection Committee member if, as of the time of the request for the information, the individual had elected to keep the information private. Open Records Decision Nos. 530 (1989), 482 (1987), 455 (1987). Except for address information protected by section 552.117, you must release the information at issue.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker", with a long, sweeping horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 123404

Enclosures: Submitted documents

cc: Mr. Robert Brown
Whitehead & Associates
3624 North Hills Dr., Suite 205-A
Austin, Texas 78731
(w/o enclosures)