OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 24, 1999

Mr. Roland Castaneda
Dallas Area Rapid Transit
P.O. Box 660183
Dallas, Texas 75206-0163

OR99-1758

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# 125468.

The Dallas Area Rapid Transit ("DART") received a request for the complete investigative file compiled by DART about an incident that occurred on January 4, 1999. The requestor is an attorney representing the person who was the subject of the complaint. You submit to this office the requested information and claim that it is excepted from disclosure by section 552.101 of the Government Code in conjunction with a right to common-law privacy. You also claim that it is excepted from disclosure by section 552.108. We have considered the exceptions you claim and reviewed the submitted information.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You state that DART received the request for information on March 25, 1999. This office did not receive DART's request for a decision until April 12, 1999, more than ten business days after DART received the request. Although chapter 552 of the Government Code

establishes a "mailbox rule" for requests mailed by United States mail, your request was delivered by Federal Express.[1] Consequently, the date you delivered your request for a ruling to Federal Express is not relevant in computing the date of delivery to this office.

Section 552.101 provides a compelling reason to withhold information from disclosure. It excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." It encompasses information protected by other statutes and by common-law privacy. It excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied); Open Records Decision No. 611 at 1 (1992). The identity of the complainant is protected under common-law privacy. *See* Open Records Decision Nos. 628 (1994), 393 (1983), and 339 (1982). Although portions of the requested information may be considered highly intimate and embarrassing, there is a legitimate public interest in the activities of a member of DART's transit police.

The need of a governmental body, other than the body that is seeking an open records decision, to withhold information under section 552.108 of the Government Code may be a compelling reason for non-disclosure. Open Record Decision 586 (1991). At this time, however, we have no basis for concluding that a governmental body other than DART needs to withhold the requested information. You must release the requested information with the exception of information that identifies the complainant, which you must withhold under the right of common-law privacy.

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 upon as a previous determination

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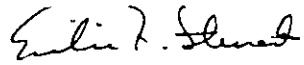
[1]Section 552.308 provides,

> When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class Untied States mail properly addressed with postage prepaid and:
>
> (1) it bears a post office cancellation mark indicating a time within the period; or
>
> (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within the period.

Gov't Code § 552.308.

regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 125468

Encl: Submitted documents

cc: Mr. John A. Haring
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Dallas, Texas 75201
(w/o enclosures)