



November 18, 1999

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

OR99-3314

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128195.

The Dallas Area Rapid Transit (“DART”) received a request for the workers’ compensation claims made by two DART employees. You assert that the responsive information is excepted from required public disclosure based on sections 552.101, 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by statute. You raise section 402.083(a) of the Labor Code, which reads as follows:

(a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

This provision makes confidential information in the Texas Workers’ Compensation Commission’s files. Section 402.086(a) of the Labor Code, which essentially transfers this confidentiality to information other parties obtain from the Texas Workers’ Compensation Commission (the “commission”), reads as follows:

(a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

You state that “DART possesses information which would be contained in or derived from a claim file at the Texas Workers’ Compensation Commission.” You have not, however, identified which of the numerous submitted documents are made confidential by these Labor Code provisions.¹ Therefore, after careful review, we have marked those documents which appear to have been obtained from the commission’s claim file. These documents must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 402.083 and 402.086 of the Labor Code. The remaining documents, however, appear to have been created by DART employees or other individuals. We do not believe that the cited Labor Code provisions apply to these records.

You next raise a confidentiality provision in the Medical Practices Act, V.T.C.S. article 4495b, section 5.08(b). Sections 5.08(b) and (c) of the MPA provide:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are 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.

Section 5.08(j)(1) provides for release of medical records upon the patient’s written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which the city police department obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the records that are subject to release only as provided by the MPA.

Section 552.101 of the Government Code also applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*,

¹The Public Information Act requires governmental bodies that seek a decision under section 552.301 to label the submitted documents to indicate which exceptions apply to which parts of the documents. *See* Gov’t Code § 552.301(b)(4). We expect DART to comply with the requirements of section 552.301.

540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982). The common-law right to privacy also generally protects from disclosure an individual's personal financial information, unless the information concerns a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992).

In addition, section 552.101 incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests: (1) an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest that implicates constitutional privacy involves matters outside the zones of privacy. To determine whether the constitutional right to privacy applies, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. *See* Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)). After reviewing the submitted documents, we have marked the information that is excepted from public disclosure under common-law or constitutional privacy in conjunction with section 552.101 of the Government Code.

We note that several of the submitted documents contain references to an employee's payroll deductions. We are unable to determine whether these payroll deductions are compulsory or whether they are the employee's personal financial choice. Therefore, to the extent that the deductions are mandatory, the information must be released. However, if the employee

has voluntarily chosen to have these amounts deducted from her paycheck, this information is protected from disclosure based on a right of privacy. *See generally* Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1990) (deferred compensation plan).

You also raise section 552.117 of the Government Code. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the information of an employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

If the employees have not made the section 552.024 election to keep their section 552.117 information confidential, the social security numbers may nevertheless be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by DART pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you raise section 552.130 of the Government Code. Section 552.130 of the Government Code provides as follows

(a) Information is excepted from [required public disclosure] if the information relates to:

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

(2) a motor vehicle title or registration issued by an agency of this state; or

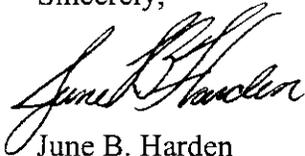
(3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

We have reviewed the submitted information and conclude that DART must withhold the submitted drivers' license numbers, VIN numbers, and license plate numbers under 552.130.

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 any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 128195

Encl. Marked documents

cc: Mr. Jonathan Ratcliff
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Dallas, Texas 75212
(w/o enclosures)