



September 17, 2002

Ms. Mary D. Marquez  
Assistant to Chief Counsel  
Capital Metropolitan Transportation Authority  
2910 East Fifth Street  
Austin, Texas 78702

OR2002-5227

Dear Ms. Marquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168740.

The Capital Metropolitan Transportation Authority (“Capital Metro”) received a request for a named individual’s application for “Primary Driver/Capital Metro Vanpool Program.” You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.130, and 552.137 of the Government Code. This office has also received correspondence from the individual who is the subject of the request for information. See Gov’t Code § 552.304 (permitting member of the public to submit to attorney general reasons why requested information should or should not be released). We have considered the arguments submitted to this office and have reviewed the submitted information.

You argue that the social security number contained in the submitted application should be withheld due to privacy concerns. Section 552.101 excepts from disclosure “information deemed confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses information protected by the common-law and constitutional rights of privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be

highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Id.* at 685.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

This office has long held that social security numbers are not the type of intimate and embarrassing information protected under common-law privacy. *See* Open Records Decision Nos. 622 (1994), 455 (1987), 254 (1980), 169 (1977). Furthermore, social security numbers are not protected by the constitutional right to privacy. *See Industrial Found.*, 540 S.W.2d at 686; Attorney General Opinion H-242 (1974). Thus, Capital Metro may not withhold the social security number at issue pursuant to the common-law or constitutional right to privacy.

However, we note that it is unclear from the information submitted whether the individual who is the subject of the request for information is a former employee of Capital Metro. If so, then her listed current and former home addresses, home telephone number, and social security number may be confidential under section 552.117. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who make a timely request that this information be kept confidential under section 552.024. Gov't Code § 552.117(1); *see id.* § 552.024; *see also* Open Records Decision No. 622 (1994). Whether information is protected under section 552.117(1) must be determined as of the time the information was requested. Open Records Decision No. 530 at 5 (1989). Thus, if the individual whose information is at issue is a former Capital Metro employee, and she elected under section 552.024, prior to the instant request, to keep this information confidential, you must withhold it under section 552.117(1) of the Government Code. If she is not a former employee, or no timely election under section 552.024 was made, then you may not withhold this information under section 552.117 of the Government Code.

We note that social security numbers that are not otherwise excepted from disclosure under section 552.117 may nevertheless 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 the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, Capital Metro should ensure that it did not obtain or maintain the social security number pursuant to any provision of law, enacted on or after October 1, 1990.

In addition, section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, we agree that you must withhold the driver's license number contained in the application under section 552.130. You must also withhold the marked license expiration date under section 552.130.

Finally, the application contains a personal e-mail address that is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." *See Gov't Code* § 552.137(a). As there is no indication that the individual to whom the e-mail address belongs has consented to its release, Capital Metro must withhold it under section 552.137 of the Government Code. *See Gov't Code* § 552.137(b) (confidential information described by this section that relates to member of the public may be disclosed if member of public affirmatively consents to its release).

In summary, if the individual who is the subject of the request for information is a former Capital Metro employee who made a timely election under section 552.024, then you must withhold the current and former home addresses, the home telephone number, and social security number in her application under section 552.117. If not confidential under section 552.117, the individual's social security number may be confidential under section 552.101 and federal law. You must withhold the driver's license number and license expiration date under section 552.130. The individual's e-mail address must be withheld under section 552.137. The remaining requested information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov't Code* § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

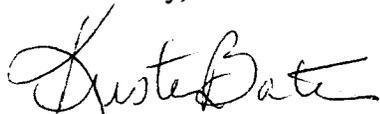
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 168740

Enc. Submitted documents

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