



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2008

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

OR2008-05700

Dear Mr. Simmons:

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# 308609.

Dallas Area Rapid Transit ("DART") received a request for all letters, e-mail messages, reports, memoranda, or other documents pertaining to a specified audit and a specified contract between August 1, 2007 and February 7, 2008. You state that you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information, which we have marked, is not responsive to the present request. The request specifically seeks information dated between August 1, 2007 and February 7, 2008. Accordingly, any information dated outside of this time period is not responsive to this request. DART need not release the marked non-responsive information in response to this request, and this ruling will not address that information.¹

Next, we note that the submitted documents include agendas and minutes of public meetings of DART's Board of Directors (the "board"). The agendas and minutes of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code. *See* Gov't Code §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and

¹We note that, because the non-responsive information includes a document for which DART asserts section 552.107 of the Government Code, we need not address your argument under that section.

copying upon request). Accordingly, the submitted agendas and minutes of public meetings must be released in accordance with the Open Meetings Act.

We also note that the submitted information contains resolutions of DART's board. Because laws and ordinances are binding on members of the public, they are matters of public record and may not be withheld from disclosure under the Act. *See* Open Records Decision No. 221 at 1 (1979) ("official records of the public proceedings of a governmental body are among the most open of records"); *see also* Open Records Decision No. 551 at 2-3 (1990) (laws or ordinances are open records). The submitted resolutions are analogous to ordinances. Accordingly, DART must release the submitted resolutions.

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 raise section 552.101 in conjunction with section 551.104(c) of the Government Code, which provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). You state that DART went into closed session on the subject of the audit at issue in this request. Therefore, DART must withhold the certified agendas and tapes of a closed meeting from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.²

You claim that the remaining documents, submitted as Exhibit B, are excepted from disclosure under section 552.116 of the Government Code, which provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

²We note that DART is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* ORD 495 at 4 (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You contend that the information you submitted as Exhibit B constitutes audit working papers prepared by an internal audit committee authorized by DART's board, and you seek to withhold this information under subsection 552.116(b). We note, however, that section 552.116 applies only to an audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education, a county, a municipality, a school district, or a joint board operating under Section 22.074 of the Transportation Code. *See id.* § 552.116(a). Because DART is not one of the specific governmental entities enumerated in section 552.116(a), we find that this section is inapplicable to information held by DART. Accordingly, none of the submitted information may be withheld under section 552.116 of the Government Code.

We note that some of the submitted information may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. We note that a cellular phone number provided to an employee at public expense may not be withheld under section 552.117. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular mobile phone numbers provided and paid for by governmental body and intended for official use). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), DART must withhold personal information that pertains to a current

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or former employee of DART who elected, prior to DART's receipt of the request for information, to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election. We have marked information that must be withheld if section 552.117 applies; however, DART may only withhold the marked cellular phone numbers if the employees at issue, rather than a governmental entity, paid for the cellular telephone service. *See* Open Records Decision No. 670 at 6 (2001).

We also note that some of the submitted information is subject to section 552.137 of the Government Code, which excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses in the submitted information are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

Finally, we note that some of the submitted information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the submitted agendas and minutes of public meetings must be released pursuant to the Open Meetings Act. DART must also release the submitted resolutions of its board. DART must withhold the certified agendas and tapes of a closed meeting under section 552.101 in conjunction with section 551.104(c) of the Government Code. DART must also withhold the information we have marked under section 552.117 of the Government Code, if the employees at issue timely elected to withhold that information and if the employees paid for the cellular telephone service, and the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining submitted information must be released, but any information protected by copyright must be released in accordance with copyright law.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Office of the Attorney General 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. 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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 308609

Enc. Submitted documents

c: Mr. Michael A. Lindenberger
Transportation Writer
The Dallas Morning News
508 Young Street
Dallas, Texas 75202
(w/o enclosures)