



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 25, 2008

Ms. Shirley Thomas
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2008-13186

Dear Ms. Thomas:

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#322691.

Dallas Area Rapid Transit ("DART") received a request for seven categories of information regarding DART's "Mystery" Riders, namely: (1) a job description, (2) background information, (3) names and payroll numbers, (4) dates of hire, (5) dates of job postings, (6) a description of job functions and authorities, and (7) the Mystery Rider departmental organization chart. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 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 is not responsive to the instant request. The request specifically seeks the aforementioned categories of information. We have marked the documents that do not fall into any of the seven specified categories. DART need not release non-responsive information in response to this request and this ruling will not address your arguments against the disclosure of that information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

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 section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts such that release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of the test must be satisfied. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual

assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that a compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we have determined that a compilation of a private citizen's criminal history is of no legitimate concern to the public. We have marked information that constitutes highly intimate or embarrassing information of no legitimate concern to the public. Thus, DART must withhold the marked information under section 552.101 in conjunction with common-law privacy.

Information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office has found "special circumstances" to refer to a very narrow set of situations in which release of the information would likely cause "an imminent threat of physical danger." *Id.* at 6. "Special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You claim that the Mystery Riders' anonymity is crucial in preserving the success of the Mystery Rider Program in preventing violations of public safety and DART policies that may endanger the public. However, we find that you have failed to demonstrate that release of the background information would cause an imminent threat of physical danger to any of the Mystery Riders. Accordingly, you have not demonstrated special circumstances sufficient to warrant withholding any of the information from public disclosure on this ground. Therefore, DART may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy based on "special circumstances."

You claim that some of the submitted information is excepted under section 552.117 of the Government Code. 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 pursuant to section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note that a post office box number is not a "home address" for purposes of section 552.117. *See id.* § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)). 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 the personal information that pertains to current or former DART employees who elected, prior to DART's receipt of the request for information, to keep such information

confidential. You have submitted information pertaining to four Mystery Riders. Two of the Riders at issue timely elected to withhold their home addresses, telephone numbers, social security numbers, and family member information from public disclosure. The remaining two Riders timely elected confidentiality for their social security numbers and family member information only, and have authorized the release of their home addresses and telephone numbers. Thus, DART must withhold only the information we have marked pursuant to section 552.117(a)(1) of the Government Code.

We note that the information at issue contains Texas motor vehicle record information.¹ Section 552.130 of the Government Code excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1), (2). Therefore, DART must withhold the information we have marked under section 552.130.

Section 552.137 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). Under section 552.137, a governmental body may disclose the e-mail address of a member of the general public if the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address. Further, the e-mail addresses at issue do not fall within any section 552.137 exceptions. Thus, DART must withhold the e-mail addresses we have marked under section 552.137.

In summary, DART must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. DART must withhold the information we have marked pursuant to section 552.117(a)(1). Furthermore, the marked Texas motor vehicle record information and marked e-mail addresses must be withheld under sections 552.130 and 552.137, respectively. The remaining 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 file suit in

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). If the governmental body does not file suit over 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/jb

Ref: ID#322691

Enc. Submitted documents

c: Mr. Kenneth Day
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(w/o enclosures)