



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 8, 2009

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

OR2009-06147

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# 342439.

The Dallas Area Rapid Transit ("DART") received a request for any documentation, letters, e-mails, and correspondence between DART and the Lewisville Police Department regarding a named DART officer as well as the named officer's personnel file. You claim that the submitted information is excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us that DART asked the requestor to clarify his request for e-mails. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See Gov't Code § 552.222(b)*; Open Records Decision No. 663 at 2-5 (1999). We understand that DART has not received a response to its request for clarification. Accordingly, we find that DART has no obligation at this time to release any information that may be responsive to the part of the request for which it has not received clarification. However, if the requestor responds to the clarification request, DART must seek a ruling from this office before withholding any responsive information from the requestor. *See ORD 663* (10-business-day deadline tolled while governmental body awaits clarification).

Section 552.117(a)(2) of the Government Code excepts from public disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information pertaining to a peace officer, regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). We note that section 552.117(a)(2) of the Government Code is applicable to a peace officer's cellular telephone number only if the cellular telephone service is paid for by the officer with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001). You state the named officer is a licensed peace officer as defined by article 2.12 of the Texas Code of Criminal Procedure. Therefore, DART must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the marked cellular telephone number may only be withheld if the cellular telephone service was not paid for by DART.

Section 552.130 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. Accordingly, DART must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.

Section 552.137 of the Government Code 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 id.* § 552.137(a)-(c). The e-mail address in the remaining information is not specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137, unless the owner of the e-mail address has affirmatively consented to its release. *See id.* § 552.137(b).

Finally, we note that a portion of the remaining information is confidential under common-law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types 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. Upon review, we find that a

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

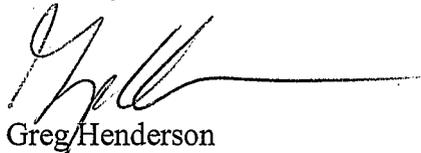
portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Thus, DART must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, DART must withhold the information we have marked under section 552.117(a)(2) of the Government Code. However, the marked cellular telephone number may only be withheld if the cellular telephone service was not paid for by DART. DART must also withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code. The e-mail address we have marked must be withheld under section 552.137, unless the owner of the e-mail address has affirmatively consented to its release. Finally, DART must withhold the information that we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#342439

Enc. Submitted documents

c: Requestor
(w/o enclosures)