



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2009

Ms. Pauline E. Higgins
Senior Vice President and General Counsel
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

Ms. Jakki A. Hansen
Assistant General Counsel
Metropolitan Transit Authority
P.O. Box 61429
Houston, Texas 77208-1429

OR2009-10073

Dear Ms. Higgins and Ms. Hansen:

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# 349595 (MTA No. 2009-0160).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for the following information regarding an accident at a METRO station involving a passenger: the investigation file, 911 tape, work orders, notes, video tapes, statements, reconstructions, measurements, witness identification, audio cassette recordings, drawings, citations, photographs, and a list of governmental personnel responding to the accident. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted the requested work orders, audio tapes, measurements, reconstructions, drawings, citations, or list of persons responding. To the

extent such information exists, we presume METRO has released it. If not, METRO must do so at this time. *See* Gov't Code §§ 552.301, .302.

Next, we note that the submitted information constitutes a completed investigation subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). Although you seek to withhold this information under section 552.103 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, Metro may not withhold any of the submitted information under section 552.103 of the Government Code. However, as section 552.117 of the Government Code can make information confidential that is otherwise subject to section 552.022(a)(1), we will consider this exception.¹

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 this information be kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). 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), METRO must withhold the social security number, home address, home telephone number, and family member information of a current or former METRO employee who elected, prior to the METRO's receipt of the request for information, to keep such information confidential. We have marked the information that is subject to section 552.117. If the employee at issue timely elected to withhold his personal information METRO must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, Metro must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employee timely elected to withhold this information. The remaining information must be released.²

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,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/dls

Ref: ID# 349595

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that the requestor has a special right of access to otherwise confidential information that pertains to the requestor's client. See Gov't Code 552.023 (a person or a person's authorized representative has special right of access, beyond that of the general public, to information that pertains to that person). Therefore, if METRO receives another request for the same information from someone other than the requestor or his client, METRO must again seek a decision from this office.