



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

November 20, 2009

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

OR2009-16622

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# 362313 (ORR# 6808).

Dallas Area Rapid Transit ("DART") received a request for a specified incident report. 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 the submitted information is subject to section 552.022 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). In this instance, the submitted information consists of completed reports that are subject to section 552.022(a)(1). Section 552.103 is not other law that makes information expressly confidential for the purpose of section 552.022(a)(1). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, DART may not withhold any of the submitted information under section 552.103. However, because information subject to section 552.022 may be withheld under section 552.117 of the Government Code, we will address the applicability of this exception to the submitted information.¹

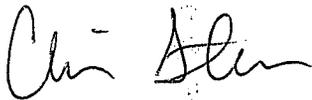
¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.117(a)(1) of the Government Code 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. Gov't Code § 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). DART may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have not informed us whether the employee whose information is at issue chose to withhold his personal information prior to DART's receipt of the request for information. Therefore, if the employee timely elected to withhold his personal information, DART must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employee did not timely elect to withhold his personal information, then DART may not withhold any of the marked personal information under section 552.117(a)(1) of the Government Code. As you make no further arguments against disclosure, the remaining information must be released to the requestor.

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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 362313

Enc. Submitted documents

c: Requestor
(w/o enclosures)