ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2010

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

OR2010-00356

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# 366687 (ORR# 6919).

The Dallas Area Rapid Transit ("DART") received a request for the requestor's personnel file. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.122, 552.130, and 552.147 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the

[1]Although you raise common-law privacy in connection with section 552.101, we note that sections 552.130 and 552.147 are the correct exceptions to raise for motor vehicle record information and social security numbers, respectively.

effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the submitted interview questions, answers, rating scales, and interview board recommendation forms in Attachment B under section 552.122. You state that the information at issue is designed to assess the performance of applicants in the position and their knowledge of the position. Further, you argue that release of the information at issue would provide an unfair advantage to future interviewees thereby reducing the effectiveness of the interview process. Having considered your arguments and reviewed the information at issue, we find that some of the interview questions qualify as test items for the purposes of section 552.122(b). We also find that the release of the actual answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that DART may withhold the interview questions we have marked, along with the actual answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions and answers, rating scales, and the interview board recommendation forms generally evaluate the applicants' general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of the applicants. Accordingly, we determine that none of the remaining information in Attachment B constitutes a test item under section 552.122(b).

You claim the addresses, telephone numbers, and dates of birth of persons other than the requestor contained in Attachment C are confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy. Section 552.101 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 if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) it is not of 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 this 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 also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See* Open Records Decision No. 545 (1990). However, we note an individual's home address and telephone number are generally not private information under common-law privacy. *See*

Open Records Decision Nos. 554 at 3 (1990) (disclosure of a person's home address and telephone number is not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy). Further, dates of birth are not highly intimate or embarrassing. *See Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, pet. granted) ("We hold that date-of-birth information is not confidential[.]"); *see also* Attorney General Opinion MW-283 (1980) (public employee's date of birth not protected under privacy); ORD 455 at 7 (birth dates not protected by privacy).

Upon review, we find that portions of the submitted information in Attachment C are highly intimate or embarrassing and of no legitimate interest to the public. However, the remaining information at issue is not highly intimate or embarrassing and of legitimate concern to the public, and is therefore not private. Accordingly, DART must withhold only the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state.[2] *See* Gov't Code § 552.130(a)(1), (2). We note, however, that this exception protects personal privacy. *See id.* In this instance, the Texas motor vehicle record information in Attachment C belongs to the requestor. The requestor has a right of access to such information under section 552.023 of the Government Code, and DART may not withhold the information under section 552.130. *Id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds information is considered confidential under privacy principles).

Attachment C contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[3] Gov't Code § 552.147(a). We agree that DART may generally withhold social security numbers under section 552.147. The requestor has a right, however, to her own social security number. *See generally id.* § 552.023(b). Therefore, with the exception of the requestor's social security number, DART may withhold the social security numbers of living individuals under section 552.147.

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[2]We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies, which authorizes withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

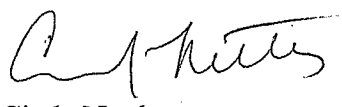
[3]We note that section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, DART may withhold the interview questions we have marked, along with the actual answers to those questions, under section 552.122 of the Government Code. DART must withhold only the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. DART may withhold social security numbers of living persons other than the requestor under section 552.147 of the Government Code. The remaining submitted information must be released.[4]

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 366687

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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[4]Should DART receive another request for these same records from a person who would not have a right of access to this requestor's private information, DART should resubmit these records and request another decision. *See* Gov't Code §§ 552.301(a), .302.