



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2013

Ms. Halfreda Anderson-Nelson
Public Information Officer
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2013-17766

Dear Ms. Anderson-Nelson:

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# 502098 (DART ORR 10088).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to specified DART policies, a named individual's personnel file, and information pertaining to specified projects, including contracts.¹ You state you have released some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also assert the release of the submitted information may implicate the proprietary interests of third parties. Accordingly, you inform us, and provide documentation showing, you notified South Oak Cliff Transit Partners, a Joint Venture ("South Oak"), HNTB Corporation, and Dikita Enterprises of the request and of their right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from South Oak. We have considered the submitted arguments and reviewed the submitted information.

¹We note the requestor narrowed his request after receiving a cost estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615.

South Oak argues its submitted proposal is not responsive to the present request because even though the proposal ultimately became part of one of the requested contracts at issue, the requestor does not specifically request the proposal. Additionally, DART contends a portion of the submitted personnel file is not responsive to the request because it pertains to another DART employee. A governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this instance, DART has reviewed its records and determined the documents it has submitted are responsive to the request. Thus, we find DART has made a good-faith effort to relate the request to information within its possession or control. Accordingly, we find the submitted information is responsive to the request and will determine whether DART must release the submitted information to the requestor under the Act.

Next, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has only received comments from South Oak explaining why its information should not be released. Therefore, we have no basis to conclude that any of the remaining third parties at issue have protected proprietary interests in the requested information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, DART may not withhold any portion of the submitted information based upon any interest the remaining third parties may have in the information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States 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 find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. This office has also concluded some

kinds of medical information are excepted from required public disclosure under common-law privacy. In addition, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987), 444 at 5-6 (1986), 432 at 2 (1984).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. DART has failed to demonstrate, however, how the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, DART may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."² Gov't Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, DART must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request confidentiality for these types of information under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. We note a post office box number is not a "home

²The 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).

address” for purposes of section 552.117.³ We also note section 552.117(a)(1) encompasses an employee’s personal cellular telephone number if the employee pays for the cellular telephone service with his or her personal funds. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to Gov’t Code § 552.117 not applicable to numbers for cellular mobile phones installed in county officials’ and employees’ private vehicles and intended for official business). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request confidentiality under section 552.024. Thus, we conclude DART must withhold the information we have marked, including the employee’s cellular telephone number if he paid for the cellular telephone service, under section 552.117(a)(1) of the Government Code to the extent the employee timely requested confidentiality for the marked information pursuant to section 552.024 of the Government Code. To the extent the employee did not timely request confidentiality, the information must be released.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130. Accordingly, DART must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. DART must withhold the marked birth date under section 552.102(a) of the Government Code. DART must withhold the information we have marked, including the cellular telephone number if paid for with personal funds, under section 552.117(a)(1) of the Government Code to the extent the employee timely requested confidentiality for the marked information pursuant to section 552.024 of the Government Code. DART must also withhold the information we have marked under section 552.130 of the Government Code.⁴ DART must release the remaining information.

³*See* Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 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)) (emphasis added).

⁴Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov’t Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov’t Code § 552.130(d), (e).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bhf

Ref: ID# 502098

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

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