



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2014

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

OR2014-05322

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# 521184 (DART Open Records Request Nos. 10558, 10559).

Dallas Area Rapid Transit ("DART") received two requests from the same requestor for financial conflict and disclosure forms filed by DART board members and employees since January 1, 2007. DART indicates it has made some of the requested information available to the requestor. DART claims the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects

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<sup>1</sup>Although you also raise section 552.131 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume DART no longer asserts this exception. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

The submitted information consists of statements of Financial Affiliation and Interest that were completed by a limited number of DART employees who make significant decisions regarding DART and financial conflict and disclosure statements that were completed by DART board members. Upon review, we find there is a legitimate public interest in these statements. The statements could provide information about potential conflicts of interest between a decision-maker's personal financial investments and the interests of DART. *See generally Barry v. New York*, 712 F.2d 1554, 1560 (2d Cir. 1983) ("Whatever one may think of the intrusiveness of financial disclosure laws, they are widespread . . . and reflect the not unreasonable judgment of many legislatures that disclosure will help reveal and deter corruption and conflicts of interest.") (internal citations omitted). *See also* Attorney General Opinion H-15 at 2 (1973) ("the public does have a legitimate interest in the current financial condition and recent financial history of those of its servants who are in positions of authority where the temptation to improperly exercise public discretion for private gain may coincide with the opportunity to do so") (underlining in original); *cf. id.* H-1070 (1977) (financial disclosure statements of high-ranking city officials not *per se* protected by common-law privacy). Accordingly, we conclude DART may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code may be applicable to some of the submitted information.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

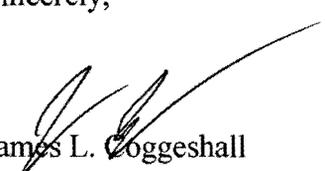
member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, DART may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. We have marked information that DART must withhold if section 552.117(a)(1) applies.

To conclude, DART must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the board members or employees at issue timely elected to withhold that information. DART must release the remaining information.

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](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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 521184

Enc. Submitted documents

c: Requestor  
(w/o enclosures)