



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2015

Ms. Kerri L. Butcher
Chief Counsel
Capital Metropolitan Transportation Authority
2910 East Fifth Street
Austin, Texas 78702

OR2015-20404

Dear Ms. Butcher:

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# 580857.

The Capital Metropolitan Transportation Authority (the "authority") received a request for employment records of a named individual, information regarding lawsuits involving the authority or its employees, and incident reports from a specified date. We understand the authority has redacted information protected by sections 552.117 and 552.130 of the Government Code.¹ You claim 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.

You state the authority sought clarification of the portions of the request for information regarding lawsuits involving the authority or its employees and incident reports from a

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 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 id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

specified date. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We note, subsequent to its request for a ruling from this office on the remainder of the request, the authority received a response to the request for clarification and requested a separate ruling from this office on the clarified request.² *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as the authority has submitted information responsive to the request and has made arguments against disclosure of this information, we will address the applicability of its arguments to the submitted information.

We must address the authority's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b).

In this instance, you state the authority received the request for information on July 9, 2015. Accordingly, the authority's ten-business-day deadline was July 23, 2015. You attempted to submit the request for a ruling electronically on July 23, 2015. However, your electronic submission was not accepted by the electronic filing system until July 24, 2015, and, thus, was not submitted within the ten-business-day deadline. *See id.* § 552.309(a) (requirement to submit information within specified period under the Act is met in timely fashion if it is submitted through attorney general's designated electronic filing system within that period). Therefore, we determine the authority failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, a compelling reason to withhold information exists where some

²The authority's request for a ruling on the clarified request has been assigned ID# 581418.

other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

You assert the submitted information is excepted under section 552.103 of the Government Code. This section, however, is discretionary in nature. Section 552.103 serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Gov't Code § 552.007; *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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions).

In addition, we find some of the submitted information is subject to section 552.022 of the Government Code. *See* Gov't Code § 552.022(a)(1) (completed evaluation expressly made public, except as provided by section 552.108 of Gov't Code). Information subject to section 552.022 must be released to the public unless confidential under the Act or other law. *See id.* Section 552.103 does not make information confidential for purposes of section 552.022.

Accordingly, no portion of the submitted information may be withheld under section 552.103 of the Government Code. However, because section 552.130 of the Government Code makes information confidential and can provide a compelling reason to withhold information for purposes of section 552.302, we will consider the applicability of this exception to the information at issue.³

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, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Upon review, we conclude the authority must withhold the information we have marked under section 552.130 of the Government Code. As you raise no other exception to disclosure, the authority 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/>

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

[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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 580857

Enc. Submitted documents

c: Requestor
(w/o enclosures)