



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 6, 2015

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

OR2015-23431

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# 586369 (DART ORR # 11808).

Dallas Area Rapid Transit ("DART") received a request for a specified investigation file. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You state DART sought clarification for the request for information. *See* Gov't Code § 552.222(b) (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). You further state DART has not received a response to the request for clarification. Thus, for the requested information for which DART has sought but has not received clarification, we find DART is not required to release information in response to the request. However, if the requestor clarifies the request for information, DART must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222(b); *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 DART 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information made confidential by section 40.321 of title 49 of the Code of Federal Regulations. Section 40.321 relates to the confidentiality of workplace drug and alcohol testing and provides:

Except as otherwise provided in this subpart, as a service agent or employer participating in the [United States Department of Transportation] drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee’s specific written consent.

(a) A “third party” is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

(b) “Specific written consent” means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. “Blanket releases,” in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

49 C.F.R § 40.321. You state the submitted information constitutes drug and alcohol test results of a DART employee. You further state the information is maintained by DART pursuant to section 40.321 of title 49 of the Code of Federal Regulations. You do not indicate that any written consent has been given with respect to disclosure of the information in question. *See id.* § 40.321(b). Based upon your representations and our review, we conclude DART must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 40.321 of title 49 of the Code of Federal Regulations.

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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 586369

Enc. Submitted documents

c: Requestor  
(w/o enclosures)