



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 16, 2016

Mr. C. Robert Heath  
Counsel for Capital Metropolitan Transportation Authority  
Bickerstaff Heath Delgado Acosta, L.L.P.  
Building One, Suite 300  
3711 South MoPac Expressway  
Austin, Texas 78746

OR2016-20959

Dear Mr. Heath:

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# 626699.

The Capital Metropolitan Transportation Authority (the "authority") received a request for information pertaining to a specified individual, including the individual's name and photograph, and all complaints filed against the individual during a specified time period. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed 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. Section 552.101 encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm. *Id.* In applying this standard, the court noted "deference must be

afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119.

You inform us portions of the submitted information, which you marked, consist of the identifying information of the specified individual. You argue release of the information you marked “poses a substantial threat of physical harm” to the specified individual given the circumstances. Upon review, we find the authority has demonstrated release of the information at issue would create a substantial threat of physical harm to the specified individual. Accordingly, the authority must withhold the identifying information of the specified individual you marked, in addition to the information we marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.<sup>1</sup>

You raise section 552.101 of the Government Code in conjunction with section 451.061(f)(1) of the Transportation Code for portions of the remaining information. Section 552.101 also encompasses information made confidential by other statutes, including section 451.061, which provides, in relevant part:

(f) Personal identifying information collected by an authority is confidential and not subject to disclosure under Chapter 552, Government Code, including a person’s:

- (1) name, address, e-mail address, and phone number;
- (2) account number, password, payment transaction activity, toll or charge record, or credit, debit, or other payment card number; and
- (3) other personal financial information.

Transp. Code § 451.061(f); *see id.* § 451.001(2) (defining “authority” for purposes of chapter 451 of the Transportation Code). We note subsection 451.061(f) is contained in section 451.061, which is titled “Fares and Other Charges.” Additionally, subsections (a) through (e) of section 451.061 discuss an authority’s responsibilities in imposing fares and other charges and the state’s power to regulate taxes imposed by an authority or other compensation authorized by this section. *See id.* § 451.061(a)–(e). Accordingly, we conclude section 451.061(f) is only applicable to personal identifying information collected by the authority for purposes relating to the collection of fares and other charges. *Cf. Ken Paxton v. Tex. Dep’t of State Health Servs.*, No. 03-14-00594-CV, at \*3 (Tex. App.—Austin Aug. 31, 2016, no pet. h.) (holding although isolated reading of section 531.1021(g) of Government Code suggests it applies to any Office of Inspector General (“OIG”))

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

investigation, confidentiality of OIG investigations provided by section 531.1021(g) must be read in context of OIG's enabling provisions and thus, extended only to OIG investigations concerning fraud, waste, and abuse in the provision and delivery of health and human services in the state). Upon review, we find the authority did not collect the complainants' personal identifying information for purposes relating to the collection of fares and other charges. Consequently, the complainants' personal identifying information you marked is not confidential under section 451.061(f) of the Transportation Code, and may not be withheld under section 552.101 of the Government Code on that basis.

In summary, the authority must withhold the identifying information of the specified individual you marked, in addition to the information we marked, under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. 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/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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

Ref: ID# 626699

Enc. Submitted documents

c: Requestor  
(w/o enclosures)