



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 16, 2016

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

OR2016-20977

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# 626682 (ORR# W000834-062216).

Dallas Area Rapid Transit ("DART") received a request for certain information and communications pertaining to the Wi-Fi system on trains during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.139 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Utility. Accordingly, you state you notified Utility of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information, some of which you inform us constitutes a representative sample.<sup>1</sup>

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<sup>1</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 that those records contain substantially different types of information than that submitted to this office.

Initially, we note 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, we have not received comments from Utility explaining why the submitted information should not be released. Therefore, we have no basis to conclude Utility has a protected proprietary interest in the submitted 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 the submitted information on the basis of any proprietary interest Utility may have in the 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 section encompasses information made confidential by federal law. *See English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). You assert the remaining records are confidential sensitive security information DART must withhold under section 552.101 in conjunction with section 1520.5 of title 49 of the Code of Federal Regulations. We note, however, section 1520.5 defines terms for purposes of title 49 and does not make information confidential. Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). Consequently, DART may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1520.5 of title 49 of the Code of Federal Regulations.

Section 552.139 of the Government Code provides, in part, as follows:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

Gov't Code § 552.139(a)-(b). Section 2059.055(b) of the Government Code provides the following, in pertinent part:

Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). You state the information at issue “contains internal network [W]i-[F]i communication codes, implementation problems, and procedures” for setting up wi-fi. You assert release of the submitted information “would provide critical information to unauthorized users that would make the systems vulnerable to alteration, damages[,] or attack.” Based on these representations and our review, we find the information we have marked relates to computer network security, and the design, operation, or defense of DART’s computer network. Accordingly, DART must withhold the information we have marked under section 552.139. However, we find you have failed to demonstrate any of the remaining information relates to computer network security, restricted information under section 2059.055, or to the design, operation, or defense of the computer network as contemplated in section 552.139(a). Further, we find you have failed to explain any of the remaining information consists of a computer network vulnerability report or assessment as contemplated by section 552.139(b). Consequently, DART may not withhold the remaining information under section 552.139.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.<sup>2</sup> *See* Gov’t Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for

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<sup>2</sup>The 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).

official use). 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). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, DART must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. Conversely, if the individuals at issue did not timely request confidentiality under section 552.024 or a governmental body pays for the cellular telephone service, then DART may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). We are unable to determine whether the submitted personal e-mail addresses, which are located within e-mails communicating official business of DART, belong to DART officials or employees. Thus, we rule conditionally. To the extent the submitted e-mail addresses are the personal e-mail addresses of DART officials or employees, this information is not subject to section 552.137 and may not be withheld on that basis. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of Gov't Code § 552.137(a)). To the extent the submitted e-mail addresses are not the personal e-mail addresses of DART officials or employees, this information is subject to section 552.137 and must be withheld under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release or subsection (c) applies.

In summary, DART must withhold the information we have marked under section 552.139 of the Government Code. If the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, DART must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code if the cellular telephone service is not paid for by a governmental body. To the extent the submitted e-mail addresses are not the personal e-mail addresses of DART officials or employees, this information is subject to section 552.137 of the Government Code and must be withheld on that basis, unless the owners of the e-mail addresses affirmatively consent to their release or subsection (c) applies. The remaining information must be released.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 626682

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)