



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 6, 2015

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

OR2015-04287

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# 555579 (DART ORR #11241).

Dallas Area Rapid Transit ("DART") received a request for any DART incident reports related to a specified type of offense within a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-19210 (2013) and 2013-22235 (2013). In Open Records Letter No. 2013-19210, we determined that, with the exception of basic information, which must be released, DART may withhold the information at issue under section 552.108(a)(1) of the Government Code because the information pertained to a pending investigation, and in releasing basic information, DART must withhold the identifying information of the victim under section 552.101 of the Government Code in conjunction with common-law privacy. In Open Records Letter No. 2013-22235, we determined that, with the exception of basic information, which must be released, DART may withhold the information at issue under section 552.108(a)(1) of the Government Code, and in releasing basic information, DART must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law

privacy. However, you state there is no longer a pending criminal investigation with regard to the information at issue in Open Records Letter No. 2013-19210. With regard to Open Records Letter No. 2013-22235, you state civil litigation is now pending in relation to the information at issue in that ruling, and we note you no longer assert section 552.108(a)(1) for this information. Accordingly, we further understand there is no longer a pending criminal investigation with regard to the information at issue in Open Records Letter No. 2013-22235. Thus, you state, and we agree, the circumstances have changed with regard to these rulings. Therefore, DART may not rely on Open Records Letter Nos. 2013-19210 and 2013-22235 as previous determinations and withhold any of the requested information on that ground. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is information same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments against disclosure of the information at issue.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of completed investigations that are subject to section 552.022(a)(1). DART must release the completed investigations pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See 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 Gov't Code § 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). Therefore, DART may not withhold the submitted information under section 552.103 of the Government Code. However, because section 552.101 can make information confidential under the Act, we will address its applicability to the submitted information. Further, we note portions of the submitted information are subject to section 552.130 of the Government

Code.¹ As this section also makes information confidential under the Act, we will consider its applicability 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects 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 concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision No. 393 at 2 (1983); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find the information we have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Thus, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate the remaining information at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, no portion of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country. Gov’t Code § 552.130(a). Accordingly, DART must withhold the information we have marked under section 552.130 of the Government Code.

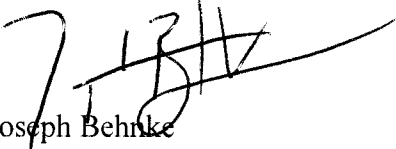
In summary, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. DART must withhold the information we have marked under section 552.130 of the Government Code. DART must release the remaining information.

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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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, 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 black ink, appearing to read 'J. Behnke', with a long horizontal stroke extending to the right.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 555579

Enc. Submitted documents

c: Requestor
(w/o enclosures)