



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 29, 2015

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

OR2015-08289

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# 564642 (ORR# 11433).

Dallas Area Rapid Transit ("DART") received a request for the human resource file, training and CLE records, and job description of a former DART employee. DART states it has released some of the requested information, but claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The submitted information contains the Texas Commission on Law Enforcement ("commission") identification number of a peace officer.<sup>1</sup> In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's commission identification number is a unique computer-generated number assigned to peace officers for identification in the commissioner's electronic

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<sup>1</sup>The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. *See* Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

database, and may be used as an access device number on the commission website. Accordingly, we find the commission identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the submitted commission identification number is not subject to the Act and DART is not required to release it to the requestor.<sup>2</sup>

We next note the submitted DART Police Department's trainee manual (the "manual") was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-18904 (2011). In Open Records Letter No. 2011-18904, we determined the manual must be released. You now seek to withhold the manual under sections 552.108 and 552.111 of the Government Code. Section 552.007 of the Government Code provides, if a governmental body voluntarily releases information to any member of the public, then the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Sections 552.108 and 552.111 do not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, DART may not now withhold the manual on either of those grounds. Accordingly, DART must release the manual to the requestor.

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 section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under [the Act], unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Occ. Code § 1701.454. The submitted information contains an F-5 Separation of Licensee form that was submitted to the commission pursuant to subchapter J of chapter 1701 of the Occupations Code, which you have marked. The form does not reflect the named former

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<sup>2</sup>As we are able to make this determination, we need not address your argument against the disclosure of this information.

officer at issue was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses. Therefore, DART must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also 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 found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, this office has also found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, DART must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and DART may not withhold it under section 552.101 on that ground.

Section 552.117 of the Government Code is applicable to some of the remaining information.<sup>3</sup> Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.<sup>4</sup> Gov't Code § 552.117(a)(2). But an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). It is

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

<sup>4</sup>"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

unclear whether the former employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the former employee is a currently licensed peace officer as defined by article 2.12, then DART must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the former employee is no longer a licensed peace officer as defined by article 2.12, then DART may not withhold this information under section 552.117(a)(2).

Nevertheless, if the former employee is no longer a licensed peace officer, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the former employee is no longer a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then DART must withhold the information at issue under section 552.117(a)(1) of the Government Code. Conversely, to the extent the former employee is no longer currently licensed as a peace officer as defined by article 2.12 and did not timely request confidentiality under section 552.024, then DART may not withhold the information at issue under section 552.117(a)(1).<sup>5</sup>

Section 552.1175 of the Government Code may be applicable to some of the remaining information. Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies to peace officers, as defined by article 2.12 of the Code of Criminal Procedure, as well as state judges, as defined by section 13.0021 of the Election Code. *Id.* § 552.1175(a)(1), (10). We have marked addresses and telephone numbers pertaining to peace officers who are not employed by DART and a

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<sup>5</sup>To the extent the former employee's social security number is not excepted from disclosure under section 552.117(a)(1), we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

judge. Thus, DART must withhold the information we have marked under section 552.1175 if (1) the information consists of home addresses or home telephone numbers, (2) the information pertains to individuals who are subject to section 552.1175(a), and (3) the individuals at issue elect to restrict access to this information in accordance with section 552.1175(b). However, DART may not withhold the information at issue under section 552.1175 if it does not consist of home addresses or home telephone numbers, the individuals at issue are not subject to section 552.1175(a), or the individuals do not elect to restrict access to this information in accordance with section 552.1175(b).

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 id.* § 552.130. DART must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.


To conclude, DART is not required to release the submitted commission identification number. DART must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code and 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 552.117(a)(2) of the Government Code if the former employee is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure; however, if the former employee is no longer a currently licensed peace officer as defined by article 2.12 and he timely requested confidentiality under section 552.024 of the Government Code, then the county must withhold the information at issue under section 552.117(a)(1) of the Government Code. DART must withhold the information we have marked under section 552.1175 of the Government Code if (1) the information consists of home addresses or home telephone numbers, (2) the information pertains to individuals who are subject to section 552.1175(a), and (3) the individuals at issue elect to restrict access to this information in accordance with section 552.1175(b). DART must also withhold the information we have marked under section 552.130 of the Government Code. DART must release the remaining responsive 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,



James E. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 564642

Enc. Submitted documents

c: Requestor  
(w/o enclosures)