



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 24, 2017

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

OR2017-08607

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# 654342 (DART ORR# W001413-013117).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to a specified incident. You state you have released some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have also received and considered comments submitted by an interested third party. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

Initially, we note some of the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code, because it contains educational records obtained from educational institutions. DART is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an "educational agency" within FERPA). Nevertheless, FERPA contains provisions that govern access to education records that an educational agency or institution transfers to a third party. You inform us some of the submitted information was transferred to DART by an educational institution. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult

student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to those records. Such determinations under FERPA must be made by the educational authority from which the records were obtained. Thus, DART must contact the educational agency at issue, as well as the DOE, regarding the applicability of FERPA to these records. To the extent the submitted information is not governed by FERPA, we address your arguments against disclosure.

DART raises section 552.101 of the Government Code in conjunction with section 452.061(e) of the Transportation Code for 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 other statutes, including section 452.061, which provides, in relevant part:

(e) 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 § 452.061(e). We understand DART is a regional transportation authority governed by chapter 452 of the Transportation Code. *See id.* ch. 452; *see also id.* § 452.001(1) (defining "authority" for purposes of chapter 452 of the Transportation Code). We note subsection 452.061(e) is contained in section 452.061, which is titled "Fares and Other Charges." Additionally, subsections (a) through (d) of section 452.061 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.* § 452.061(a)–(d). Accordingly, we conclude section 452.061(e) is only applicable to personal identifying information collected by DART for purposes relating to the collection

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

of fares and other charges. *Cf. Paxton v. Tex. Dep't of State Health Servs.*, 500 S.W.3d 702, 706 (Tex. App.—Austin 2016, no pet.) (holding although isolated reading of section 531.1021(g) of Government Code suggests it applies to any Office of Inspector General (“OIG”) 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 DART did not collect the personal identifying information of the individuals at issue for purposes relating to the collection of fares and other charges. Consequently, the individuals’ personal identifying information is not confidential under section 452.061(e) of the Transportation Code, and may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, DART must withhold all public citizens’ dates of birth, which we have marked, under section 552.101 of the Government Code.

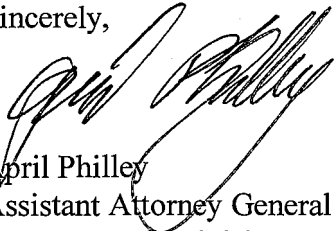
Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130(a). We find portions of the remaining information consist of motor vehicle record information. Accordingly, DART must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, DART must withhold the dates of birth of public citizens, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. DART must withhold the motor vehicle record information, which we have marked, under section 552.130 of the Government Code. The remaining information must be released.

DART also asks this office to issue a previous determination that would authorize it to withhold personal identifying information collected by DART under section 552.101 of the Government Code in conjunction with section 452.061 of the Transportation Code. We decline to issue such a previous determination at this time. 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,



April Philley  
Assistant Attorney General  
Open Records Division

AP/sb

Ref: ID# 654342

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

1 Third Party  
(w/o enclosures)