



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2018

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

OR2018-00275

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# 690357 (Ref. No. W002089-092917).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to a specified incident involving a named individual.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 other statutes make confidential. DART is a regional transportation authority governed by chapter 452 of the Transportation Code. *See* Transp. Code ch. 452; *see also id.* § 452.001(1) (defining "authority" for purposes

¹We note the requestor modified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request). *See also City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

of chapter 452 of the Transportation Code). Section 452.061(e) of the Transportation Code reads as follows:

Personal identifying information collected by an authority is confidential and not subject to disclosure under [the Act], 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.

Id. § 452.061(e). DART asserts portions of the submitted information consist of personal identifying information made confidential by subsection 452.061(e). 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 subsection 452.061(e) is only applicable to personal identifying information collected by DART for purposes relating to the collection 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.) (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 provision and delivery of health and human services in state). Upon review, we find DART did not collect the personal identifying information for purposes relating to the collection of fares and other charges. Consequently, the personal identifying information at issue is not confidential under subsection 452.061(e) of the Transportation Code, and DART may not withhold it 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, 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. Upon review, however, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern, and DART may not withhold any of the submitted information under section 552.101 of the

Government Code on the basis of common-law privacy. DART must release the submitted information.

You ask this office to issue a previous determination to DART 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 without the necessity of requesting a ruling from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). In the alternative, you ask this office to issue a previous determination to DART that would authorize it to release personal identifying information collected by DART. We decline to issue such a previous determination at this time. Accordingly, 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, 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 690357

Enc. Submitted documents

c: Requestor
(w/o enclosures)