



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 12, 2018

Ms. Halfreda Anderson-Nelson
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2018-00876

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# 691513 (DART ORR# W002156-102017).

Dallas Area Rapid Transit ("DART") received two requests from the same requestor for two specified incident reports. You state DART released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state report number DTC17005473 relates to an ongoing investigation, and release of that report would interfere with the investigation and prosecution of the case. Based upon this representation, we conclude the release of report number DTC17005473 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report number DTC17005473.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, which must be released, DART may withhold report number DTC17005473 under section 552.108(a)(1) of the Government Code.

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 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 remaining 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. *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.). Accordingly, DART must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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.¹ See Gov't Code § 552.130. Accordingly, DART must withhold the motor vehicle record information we marked under section 552.130 of the Government Code.

In summary, with the exception of basic information, which must be released, DART may withhold report number DTC17005473 under section 552.108(a)(1) of the Government Code. DART must withhold all public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. DART must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. DART must release the remaining information.

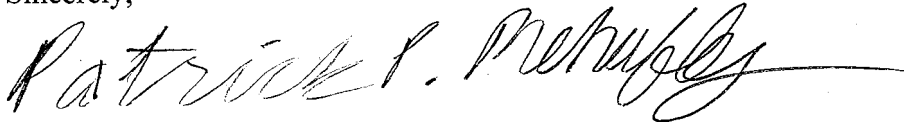
Finally, you also ask this office to issue a previous determination that would authorize it to withhold personal identifying information collected by DART under section 552.101 of the Government Code in conjunction with section 452.061 of the Transportation Code. In the alternative, you ask this office to issue a previous determination that would authorize it to release personal identifying information collected by DART. We decline to issue such a previous determination with respect to either request 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

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, reading "Patrick P. Mehaffy". The signature is written in a cursive style with a long horizontal line extending to the right.

Patrick P. Mehaffy
Attorney
Open Records Division

PPM/som

Ref: ID# 691513

Enc. Submitted documents

c: Requestor
(w/o enclosures)