



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 17, 2018

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

OR2018-00974

Dear Ms. 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# 691876.

Dallas Area Rapid Transit ("DART") received a request for information pertaining to a specified automobile accident. You claim some of 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. This section encompasses information protected by other statutes, such as section 452.061 of the Transportation Code. 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 of the Transportation Code 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.

Id. § 452.061(e). You assert some of the submitted information consists of personal identifying information made confidential by section 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 section 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.) (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 at issue for purposes relating to the collection of fares and other charges. Consequently, the personal identifying information at issue 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, 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.

You also seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. However, a portion of the information at issue pertains to the requestor’s client. *See Gov’t Code* § 552.023(a) (“person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open

Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to his client that would otherwise be confidential under common-law privacy. Furthermore, we find DART has failed to demonstrate the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, DART may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. DART must release the submitted information.¹

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. In the alternative, DART asks 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 providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MC/sb

¹We note the requestor has a right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if DART receives another request for the same information from a different requestor, DART must again seek a decision from this office.

Ref: ID# 691876

Enc. Submitted documents

c: Requestor
(w/o enclosures)