



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 31, 2019

Ms. Tangerla Williams
Public Information Officer
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2019-02919

Dear Ms. Williams:

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# 748478 (PIR No. W003321).

Dallas Area Rapid Transit ("DART") received a request for all records regarding the employment of a named individual. You state DART will release some information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ 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 of the Government Code encompasses the Americans with Disabilities Act of 1990 (the "ADA"). *See* 42 U.S.C. § 12101 *et seq.* Title I of the ADA provides information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. Information obtained in the course of a "fitness for duty examination" conducted to determine whether an employee is

¹Although you initially raised sections 552.103, 552.104, 552.108, and 552.111 of the Government Code as exceptions to disclosure, you provided no arguments regarding the applicability of these sections. Accordingly, we assume you no longer assert these sections. *See* Gov't Code §§ 552.301, .302.

still able to perform the essential functions of his or her job is to be treated as a confidential medical record as well. *See* 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). Furthermore, the federal Equal Employment Opportunity Commission (the “EEOC”) has determined medical information for the purposes of the ADA includes “specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual.” *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Federal regulations define “disability” for the purposes of the ADA as “(1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.” 29 C.F.R. § 1630.2(g). The regulations further provide physical or mental impairment means: (1) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *See id.* § 1630.2(h). Upon review, we find the ADA is not applicable to the submitted information. Thus, DART may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the ADA.

Section 552.101 of the Government Code also encompasses the Family Medical and Leave Act (the “FMLA”). *See* 29 U.S.C. §§ 2601 *et seq.* Section 825.500 of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 provides the following:

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA shall be maintained in accordance with the confidentiality requirements of Title II of GINA . . . which permit such information to be disclosed consistent with the requirements of FMLA. If the [Americans with Disabilities Act (the “ADA”)], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements . . . except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

(2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

(3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). Upon review, we find the information we marked is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Although the requestor is the authorized representative of the individual at issue, we note the FMLA has its own release provisions. Thus, DART may disclose the information made confidential under the FMLA only in accordance with these access provisions. *See id.* We find the requestor has failed to demonstrate, and we are not otherwise able to discern, any of the FMLA release provisions applies to the information at issue. Accordingly, DART must withhold the information we marked under section 552.101 of the Government Code in conjunction with the FMLA. As no further exceptions to disclosure have been raised, DART must release the remaining information.²

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

²We note the information being released contains information to which the requestor has a right of access as the named individual's authorized representative. If DART receives another request for this particular information from a different requestor, then DART should again seek a decision from this office.

Ref: ID# 748478

Enc. Submitted documents

c: Requestor
(w/o enclosures)