



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 5, 2019

Ms. Jacqueline E. Hojem
Public Information Coordinator
Metropolitan Transit Authority of Harris County
P.O. Box 61429
Houston, Texas 77208-1429

OR2019-31065

Dear Ms. Hojem:

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# 795388 (ORR# 2019-0735).

The Metropolitan Transit Authority of Harris County ("METRO") received a request for information pertaining to a specified incident. METRO states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception 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. A federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101 of the Act. *See* Open Records Decision No. 599 at 4 (1992). Section 40.321 of title 49 of the Code of Federal Regulations relates to the confidentiality of workplace drug and alcohol testing information of employers participating in the United States Department of Transportation ("DOT") drug or alcohol

testing process. *See* 49 C.F.R. pt. 40 (procedures for transportation workplace drug and alcohol testing programs). Section 322 of title 49 of the United States Code authorizes the Secretary of Transportation (the “secretary”) to prescribe regulations necessary to carry out the duties and powers of the secretary. *See* 49 U.S.C. § 322. Section 40.321 of title 49 of the Code of Federal Regulations provides, in part, as follows:

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, [METRO is] prohibited from releasing individual test results or medical information about an employee to third parties without the employee’s specific written consent.

(a) A “third party” is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

(b) “Specific written consent” means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. . . .

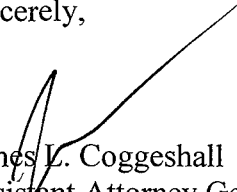
49 C.F.R. § 40.321. METRO states the submitted information consists of the alcohol test results of a METRO employee that are confidential under section 40.321. METRO further states it maintains the information pursuant to that section. METRO informs us it has not received written consent from the employee to release this information. *See id.* § 40.321(b). Based on these representations and our review, we conclude METRO must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 322 of title 49 of the United States Code and section 40.321 of title 49 of the Code of Federal Regulations.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 795388

Enc. Submitted documents

c: Requestor
(w/o enclosures)