



July 18, 2000

Ms. Linda Wiegman
Office Of General Counsel
Texas Department Of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-2699

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137268.

The Texas Department of Health (the “department”) received a request for information relating to the selection and screening process for job posting number 00-TDH-0613. You have made available to the requestor some of the information that is responsive to the request. You have submitted for our review a set of interview questions and model answers, and one employment application as a representative sample of the fifty-four applications which you state are responsive to the request.¹ You have identified certain information in the submitted documents which you assert is excepted from disclosure under sections 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you assert and reviewed the submitted information.

Section 552.130 of the Government Code governs the release and use of motor vehicle record information. Section 552.130 provides:

¹In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state; or
- (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

Gov't Code § 552.130. This provision protects information such as Texas driver's license numbers, license plate numbers, and vehicle identification numbers. In accordance with this provision, we agree that the information you have marked on the submitted application is implicated under section 552.130(a), and we determine you must not release this information.

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). This office has stated that a "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). When answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122. *Id.* at 8; Attorney General Opinion JM-640 at 3 (1987). The question of whether specific information falls within the ambit of section 552.122(b) must be determined on a case-by-case basis. ORD 626 at 6. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of further examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Based on your representations and our review of the submitted information, we believe that the standardized questions and recommended responses you have marked are excepted from disclosure in this instance. The department may withhold the marked information under section 552.122 of the Government Code.

Section 552.117 of the Government Code excepts from required public disclosure the home address, home telephone number, social security number, or personal family member information of public employees who request that this information be kept confidential under section 552.024. Section 552.117 requires the department to withhold this information if a current or former employee or official requested under section 552.024 that this information be kept confidential. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after the present request for information was made. Whether a particular piece of information is public must be determined at the

time the request for it is made. Open Records Decision No. 530 at 5 (1989). You explain that the submitted employment application contains section 552.117 information of a department employee who has made an election of confidentiality under section 552.024. We therefore agree that the department must not release the section 552.117 information of that employee. We agree that the information you have marked is excepted under section 552.117. We have also marked certain additional information which we believe must be withheld pursuant to this provision.

As you indicate there exists fifty-three other employment applications that are also responsive to the request, we find it conceivable that some of the applications contain section 552.117 information of individuals who are neither current nor former department employees, but instead are solely applicants for employment with the department. Section 552.117 does not apply to information about job applicants. Open Records Decision No. 455 at 2 (1987) (statutory predecessor to section 552.117 does not protect applicant information). We note, however, that where section 552.117 does not apply to except the individual's social security number, disclosure of the social security number may nevertheless be prohibited by federal law. A social security number is excepted from required public disclosure under section 552.101 of the Government Code² in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We note that the federal statute provides that the *law* requiring the maintenance of the employee's social security number must have been enacted on or after October 1, 1990. In other words, the fact that the social security number was obtained by the department after October 1, 1990, by itself, does not dispose of the issue. We are unable to determine whether, in this instance, any of the social security numbers at issue are confidential under this federal statute.³ We note, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Thus, prior to releasing any social security number information from the responsive records, you should ensure that no such information was obtained or is maintained by the department

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

³You argue that the social security numbers are made confidential in this instance by section 552.101 in conjunction with 42 U.S.C. § 405(c)(2)(C)(viii)(I) because the "*records were obtained/maintained pursuant to Tex. Government Code, Chapter 441, Subchapter L, which was added in 1997.*" (emphasis added). We acknowledge that chapter 441 of the Government Code contains records management provisions that are applicable to the department's records. We do not find, however, that these records management provisions contain any specific language that authorize the department to obtain or maintain the *social security number information* at issue. *See* Gov't Code § 441.180 *et seq.* Thus, we do not believe that the records management provisions you cite constitute provisions of law enacted on or after October 1, 1990 that authorize the department to obtain or maintain social security number information.

pursuant to any provision of law, enacted on or after October 1, 1990, which authorizes or requires the department to obtain or maintain that social security number information.

In summary, you must withhold the section 552.117 and 552.130 information we have marked. You may also withhold the information that is marked as excepted under section 552.122. The social security number information in the responsive records may also be confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act. You must release the remaining information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

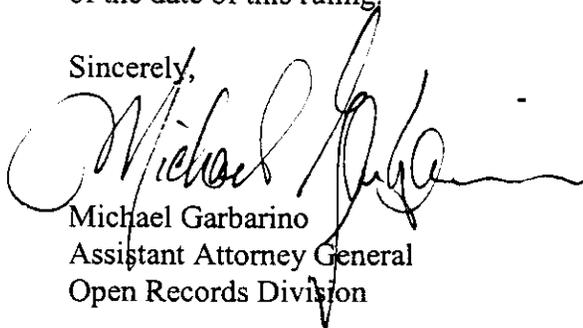
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137268

Encl. Submitted documents

cc: Ms. Donna Nichols
1100 West 49th Street
Austin, Texas 78756
(w/o enclosures)