



February 6, 2001

Ms. Susan Cory
General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

OR2001-0471

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143947.

The Texas Workers' Compensation Commission (the "TWCC") received a request for fourteen categories of information related to interviews for the position of Human Resources Specialist IV (HR Investigator, Posting # 00-379). You indicate that most of the responsive information will be provided to the requestor. However, you claim that a portion of the requested information is excepted from disclosure under section 552.122(b) of the Government Code. You have provided responsive information to this office for review. We have considered the exception you claim and reviewed the submitted information.

We first note that you have provided two employment applications and one interview log for which you assert no exception to disclosure. Portions of the applications are confidential and must be withheld. The remainder of the applications must be released as must the interview log.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts hold that information is protected by common law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Personal financial information concerning an individual, and not involving a transaction with a governmental body, generally meets both prongs of this test, and is therefore protected by a common law right of privacy. *See Open Records Decision Nos. 545 (1990), 523 (1989)*. We have marked the portion of the information on the applications which we consider to be protected by the common law right of privacy. This information must be withheld.

Social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the records here are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Information on these applications also implicates section 552.117 of the Government Code. This section excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family member information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information from the submitted applications if an applicant was hired and requested that this information be kept confidential under section 552.024 before the request for information was received. *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 this request for information was received. We note from the submitted materials that not all applicants were selected for this position. You may not withhold information protected by section 552.117 for an applicant who is not a current or former employee.

TWCC contends that questions 3, 4, and 5, and their respective responses, preferred answers, interview scores, and weights assigned are excepted from disclosure by section 552.122(b). This section excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122(b) 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. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122(b) where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). When answers to test questions might reveal the questions themselves, the answer may also be withheld under section 552.122. *Id.* at 8; *see* Attorney General Opinion JM-640 at 3 (1987). From our review of the submitted materials we conclude that questions 3, 4, and 5, and their

respective responses and preferred answers, may be withheld under section 552.122. However, interview scores and weights assigned to various questions do not measure knowledge in a particular area, and are therefore not the type of information protected by section 552.122. This information must be released.

To summarize, you must withhold, under section 552.101, the information protected by the common law right of privacy, which we have marked. You must also withhold, under section 552.117, the social security numbers and home addresses of current or former employees who elected non disclosure of this information prior to your receipt of the request for information. You must also withhold social security numbers that you determine were obtained or maintained pursuant to any provision of law enacted on or after October 1, 1990. You may withhold, under section 552.122, questions 3, 4, and 5 and their respective responses and preferred answers. You must release the remaining responsive 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).

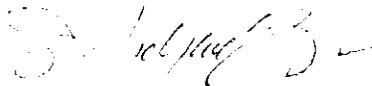
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 143947

Encl: Submitted documents

cc: Mr. David R. Purdue
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Arlington, Texas 76013
(w/o enclosures)