



March 1, 2001

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2001-0766

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144574.

The Texas Department of Transportation (the "department") received a request for information relating to a job vacancy notice, including a list of applicants, a list of applicants selected for an interview, the application of the person selected for the position, interview responses for the requestor and the person selected, and the score sheet for all interview applicants. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.122, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) 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 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. Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Having reviewed the submitted questions in Exhibit B, we agree that the questions are "test items" as contemplated by section 552.122(b). Therefore, you may withhold the submitted questions and answers under section 552.122(b).

¹Because you seek to withhold only a portion of the requested information, we assume that you have released the remainder of the information. *See* Gov't Code §§ 552.021, .301, .302.

Next, you claim that certain information in the selected applicant's application is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We first address your argument that the selected applicant's social security number is excepted from disclosure 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.* You state that the department maintains its employees' social security numbers pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. *See* 42 U.S.C.A. § 653a(a)(2)(B), (b)(1)(A). Because the department maintains the selected applicant's social security number pursuant to a provision of law enacted on or after October 1, 1990, you must withhold the social security number under section 552.101 in conjunction with the Social Security Act.

You further argue that the home address and telephone number, as well as the family member information of the selected applicant are excepted from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body, except as provided by section 552.024 of the Government Code. Section 552.024 provides:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body that relates to the person's home address, home telephone number, or social security number, or that reveals whether the person has family members.

(b) Each employee and official and each former employee and official shall state that person's choice under Subsection (a) to the main personnel officer of the governmental body in a signed writing no later than the 14th day after the date on which:

- (1) the employee begins employment with the governmental body;
- (2) the official is elected or appointed; or
- (3) the former employee or official ends service with the governmental body.

(c) If the employee or official or former employee or official chooses not to allow public access to the information, the information is protected under Subchapter C.

(d) If an employee or official or a former employee or official fails to state the person's choice within the period established by this section, the information is subject to public access.

Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the selected applicant had not yet begun working for the department at the time it received the request for information. However, you indicate that the selected applicant worked for another state agency before working for the department and that, while working for the other agency, the selected applicant elected to keep his home address and telephone number, social security number, and family member information confidential under section 552.024 of the Government Code. However, section 552.024 states that an employee of a governmental body may elect to keep confidential certain information "in the custody of the governmental body." While the selected applicant may have elected to keep confidential his home address and telephone number, social security number, and family member information in the custody of another governmental agency, you have not indicated whether the selected applicant made this election with respect to the same information in the department's custody. The selected applicant's section 552.024 election for the other agency does not apply to records in the department's custody. If the selected applicant began his employment with the department and filed an election with the department before the instant request was made to keep his home address, home telephone number, and family member information confidential, you must withhold this information under section 552.117 of the Government Code. *See* Gov't Code § 552.024, .117. Likewise, if the department received the instant request for information within fourteen days after the date on which the selected applicant began his employment and the selected applicant had not elected to allow public access to his home address, home telephone number, and family member information as of the date of the request for information, you must withhold the selected applicant's home address, home telephone number, and family member information. *See id.* § 552.024(b), (d). However, if the selected applicant did not begin his employment until after the instant request for information was made or the department received the request on or after the fifteenth day from the date the selected applicant began employment and he had not yet elected to keep his information confidential as outlined under section 552.024, the selected applicant's home address, home telephone number, and family member information are not protected under section 552.117. *See id.* §§ 552.024, .117(1). Furthermore, if, at the time of the request, the selected applicant had elected to allow public access to his home address, home telephone number, and family member information, you must release the information. *See id.*

Finally, section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license information that you have marked under section 552.130 of the Government Code.

In summary, you may withhold the interview questions and answers contained in Exhibit C under section 552.122 of the Government Code. Furthermore, you must withhold the social security number you have marked in Exhibit D under section 552.101 of the Government Code. You must also withhold the Texas driver's license information you have marked in Exhibit D under section 552.130 of the Government Code. Finally, you must withhold the home address, home telephone number, and family member information marked in Exhibit D only if the selected applicant had not elected to allow public access to this information as of the date the department received the instant request for information and the department received the instant request for information within fourteen days after the date on which the selected applicant began his employment with the department, or if the selected applicant filed an election with the department under section 552.024 after the selected applicant began employment but before the instant request for information was made. Otherwise, the selected applicant's home address, home telephone number, and family member information is not protected by section 552.117(1) and must be released.

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

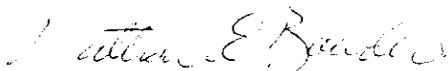
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Dep't of Pub. 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 144574

Encl: Submitted documents

cc: Ms. Bettye J. Taylor
3004 Susquehanna Lane
Austin, Texas 78723
(w/o enclosures)