



October 19, 2001

Ms. Janice Mullenix  
Associate General Counsel  
Texas Department of Transportation  
DeWitt C. Greer State Highway Building  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2001-4725

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# 153635.

The Texas Department of Transportation (the "department") received a request for information relating to a named individual's application for a position with the department. You state that the department will release much of the requested information. You claim that portions of the remaining information are excepted from disclosure under sections 552.101, 552.117, 552.122, 552.130, and 552.136 of the Government Code. We have considered the exceptions you raise and have reviewed the representative sample of information you submitted.<sup>1</sup>

Section 552.117(1) of the Government Code excepts from disclosure the home address, home telephone number, and social security number of a current or former employee of a governmental body, as well as information that reveals whether the employee has family members, *if the current or former employee timely requested that this information be kept confidential under section 552.024*. See Open Records Decision Nos. 622 (1994), 455 (1987). This information may not be withheld, however, in the case of a current or former employee who made the request for confidentiality under section 552.024 after the 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. See Open Records Decision No. 530

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

at 5 (1989). In this instance, the submitted documentation demonstrates that the employee in question made a timely election under section 552.024. Therefore, the department must withhold the employee's home address, home telephone number, and social security number that appear in Exhibit B under section 552.117.<sup>2</sup>

Section 552.130 excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The Texas driver's license information that appears in Exhibit B must be withheld under section 552.130.

Section 552.136 of the Government Code, which the Seventy-seventh Legislature recently enacted, makes certain e-mail addresses confidential.<sup>3</sup> House Bill 2589, which became effective September 1, 2001, provides in relevant part:

Sec. 552.136. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). You do not inform this office that the individual who provided the e-mail address in Exhibit B to the department has affirmatively consented to its release. Therefore, the department must withhold this email address under section 552.136 of the Government Code.

Lastly, you claim that section 552.122 of the Government Code excepts the information in Exhibit D from disclosure. Section 552.122(b) excepts from disclosure "a test item developed by a . . . 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

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<sup>2</sup>As sections 552.024 and 552.117 are dispositive, we do not address your arguments with regard to social security numbers under section 552.101.

<sup>3</sup>Section 552.137, as added to chapter 552 of the Government Code by the Seventy-seventh Legislature in Senate Bill 694, also makes certain e-mail addresses confidential. See Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.137). The language of section 552.137, as added by Senate Bill 694, is identical to that of section 552.136, as added by House Bill 2589.

or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). 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).

The department seeks to withhold, as "test items," seven interview questions and the corresponding preferred and actual answers. You contend that these questions "relate to the stated knowledge, skills, and abilities required for the position and do not focus on qualifications or experience unique to a particular applicant." You inform us that the department anticipates using these interview questions for future job vacancies of this kind. You also assert that the release of the preferred and actual answers would reveal the nature of the questions asked. Having considered your arguments, we conclude that six of these questions qualify as test items under section 552.122 of the Government Code. We also find that disclosure of the preferred and actual answers would tend to reveal the questions themselves. We have marked the questions and answers that the department may withhold under section 552.122.

In summary, the department must withhold the home address, home telephone number, and social security number in Exhibit B under section 552.117 of the Government Code; the Texas driver's license information in Exhibit B under section 552.130; and the email address in Exhibit D under section 552.136. The marked interview questions and answers in Exhibit C are excepted from disclosure under section 552.122. The remaining information 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

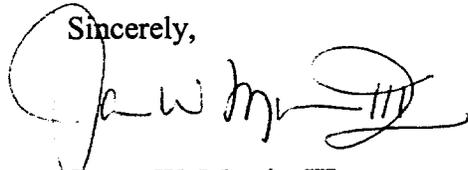
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 Dept. 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 153635

Enc: Submitted documents

c: Mr. Othol K. Long  
P.O. Box 105  
Robert Lee, Texas 76945  
(w/o enclosures)