



January 31, 2002

Ms. Janice Mullenix  
Associate General Counsel  
Texas Department of Transportation  
125 East 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2002-0465

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# 157983.

The Texas Department of Transportation (the "department") received a request for copies of employment applications filed for all individuals asked to interview for a specified job vacancy number. The requestor also asks for copies of the screening instrument and interview questions utilized for this position. You state that you will provide the requestor with some responsive information. You claim, however, that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that Exhibit B is excepted from disclosure pursuant to section 552.122 of the Government Code. 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. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *See* Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *See id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

Based on our review of your arguments and Exhibit B, we find that questions two and three constitute "test items" as contemplated by section 552.122(b) and may, therefore, be

withheld from disclosure. The department may also withhold the recommended responses associated with each of those questions from disclosure under section 552.122(b) because they tend to reveal the substance of each test question. However, because questions four through six are not "test items" under section 552.122(b) of the Government Code, the department must release those questions and their associated recommended responses to the requestor.

You also claim that portions of Exhibit C are excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) 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 who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(1)*. However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. 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 at 5 (1989)*.

You have submitted forms to our office reflecting that three department employees timely requested that their social security numbers and family member information be kept confidential. The forms also reflect that two of these three employees timely requested that their home address and home telephone number be kept confidential. Accordingly, we conclude that the department must withhold from disclosure most of the social security number and family member information that you have bracketed throughout Exhibit C pursuant to section 552.117(1). However, we have marked some information in Exhibit C which must be released to the requestor because it does not constitute information that is protected under section 552.117(1). Further, the department must also withhold from disclosure most of the home address and home telephone number information that you have bracketed throughout Exhibit C pursuant to section 552.117(1). However, because one department employee did not elect to deny access to his home address and home telephone number, the department may not withhold this employee's home address and home telephone number in Exhibit C from disclosure under section 552.117(1). Consequently, the department must release this information, which we have marked in Exhibit C, to the requestor.

You also claim that driver's license information in Exhibit C is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130*. Accordingly, we conclude that the department must withhold from disclosure the driver's license information that you have marked in Exhibit C pursuant to section 552.130 of the Government Code.

We also note that Exhibit C contains some information that is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>1</sup> Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Based on our review of Exhibit C, we have marked the information that you must withhold from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, the department may withhold from disclosure questions two and three, and the recommended responses associated with each of those questions, in Exhibit B pursuant to section 552.122(b) of the Government Code. The department must withhold most of the social security number and family member information that it has bracketed throughout Exhibit C from disclosure pursuant to section 552.117(1) of the Government Code. However, the department must release some information in Exhibit C that we have marked because it does not constitute information that is protected under section 552.117(1). The department must also withhold most of the home address and home telephone number information that it has bracketed throughout Exhibit C from disclosure pursuant to section 552.117(1). However, the department must release the home address and home telephone number information of one of the three department employees, which we have marked in Exhibit C, since this employee did not elect to deny access to his home address and home telephone number. The department must withhold the driver's license information that you have marked in Exhibit C from disclosure pursuant to section 552.130 of the Government Code. The department must withhold the information that we have marked in Exhibit C from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The department must release the remaining submitted information to the requestor.

You request that this office issue a previous determination allowing the department to withhold the following categories of information from disclosure in response to future requests for information without the necessity of seeking a ruling from this office: 1) home addresses, home telephone numbers, social security numbers, and family member information of public employees who request that this information be kept confidential under section 552.024 of the Government Code; and 2) driver's license numbers. Therefore, as per

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by the common-law right to privacy.

your request, this letter ruling shall serve as a previous determination under section 552.301(a) that Texas driver's license numbers are excepted from disclosure under section 552.130 of the Government Code. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001). However, we note that section 552.130 protects the privacy of the individual to whom the information relates. Therefore, a person's section 552.130 information must be released to her or her authorized representative. *See* Gov't Code § 552.023 (person or person's authorized representative has a special right of access to information that is protected by laws intended to protect person's privacy). In addition, we note that because the effect of section 552.130 lapses upon death, the department may not withhold a deceased individual's driver's license number from disclosure. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981).

This previous determination applies only to Texas driver's license numbers that are requested of the Department of Transportation. *See* Open Records Decision No. 673 at 7 (2001). Moreover, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the department need not ask for a decision from this office again with respect to this type of information requested of the Department of Transportation. *See id.* This ruling does not address the applicability of chapter 730 of the Transportation Code.

We note, however, that we decline at this time to issue a previous determination allowing the department to withhold from disclosure home addresses, home telephone numbers, social security numbers, and family member information of public employees who request that this information be kept confidential under section 552.024 of the Government Code.

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

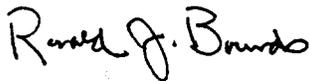
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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 Texas Building and Procurement 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 157983

Enc. Marked documents

cc: Ms. Diane L. Venable  
2500 Rockingham Drive  
Austin, Texas 78704  
(w/o enclosures)