



August 5, 2002

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

OR2002-4284

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# 166808.

The Texas Department of Transportation (the "TxDOT") received a request for the "questions and answers of all who interviewed for" job vacancy 002102 as well as the "application...of the person [a]warded the job." You state that you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, 552.122, and 552.130 of the Government Code, and you have submitted a representative sample of the information you wish to withhold.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim that section 552.122 applies to the information that you have marked exhibit B, which consists of a representative sample of the requested questions and answers. 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

¹We 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.

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. Open Records Decision No. 626 at 6 (1994). Having reviewed the submitted questions, we agree that they are "test items" as contemplated by section 552.122(b). Therefore, you may withhold the questions and answers that you have marked as exhibit B under section 552.122(b).

We now consider the exceptions you have raised to release of the information that you have marked exhibit C, which is the requested application of the individual awarded the job. Your first claim section 552.117 applies to the information in exhibit C. 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 who request that this information be kept confidential under section 552.024. 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). Therefore, the TxDOT may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the TxDOT must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The TxDOT may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. You have submitted a form showing that the employee whose personal information is included in exhibit C requested that his personal information remain confidential prior to the TxDOT's receipt of the request for information. Therefore, you must withhold most of the personal information that you have marked in exhibit C under section 552.117. We have marked the information that is not excepted under section 552.117 that the TxDOT must release.

Finally, you assert that certain motor vehicle information contained in exhibit C is excepted from release under section 552.130. 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[.]

You must therefore withhold the Texas driver's license number and the information regarding whether the applicant has a commercial driver's license that we have marked in exhibit C.

In summary, we find that you may withhold the questions and answers contained in exhibit B under section 552.122. You must withhold the personal information contained in exhibit C under section 552.117 provided that the relevant government employee requested that his personal information remain confidential prior to the current request for information. Finally, you must withhold the driver's license information contained in exhibit C pursuant to section 552.130. As section 552.117 requires you to withhold the social security number in exhibit C, we need not consider your argument under section 552.101.

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).

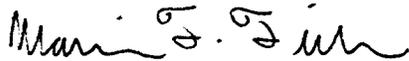
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "Maverick F. Fisher". The signature is written in a cursive style with a large initial "M".

Maverick F. Fisher
Assistant Attorney General
Open Records Division

MFF/seg

Ref: ID# 166808

Enc. Submitted documents

c: Mr. David Moore
4780 Peak Road
Granbury, Texas 76048-6828
(w/o enclosures)