



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 19, 2004

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2004-1222

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196430.

The Texas Department of Criminal Justice ("TDCJ") received a request for all information pertaining to the selection process for a specified job opening. You claim that some of the requested information is excepted from disclosure under sections 552.117, 552.122, 552.130, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) of the Government Code 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. 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. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

You contend that most of the submitted interview questions and responses are excepted from disclosure under section 552.122(b) of the Government Code. After reviewing the information, we agree that interview questions one through four test an individual's knowledge in a particular area and thus constitute "test items" as contemplated by section 552.122(b). Accordingly, TDCJ may withhold interview questions one through four, and the corresponding responses, pursuant to section 552.122(b) of the Government Code. We find, however, that question five is not a test item for purposes of section 552.122. Thus, TDCJ may not withhold question five, or the submitted responses corresponding to question five, pursuant to section 552.122 of the Government Code.

We next consider your claim under section 552.117 of the Government Code. Section 552.117(a)(3) excepts from disclosure the home address and telephone number, social security number, and family member information of current or former employees of TDCJ. You indicate that the personal information you have highlighted in the submitted documents pertains to current or former TDCJ employees. We agree that TDCJ must withhold the home address, telephone number, social security number, and family member information of current or former employees pursuant to section 552.117(a)(3) of the Government Code. You must also withhold the additional information that we have marked. We note, however, that the post office box number that you have highlighted is not a "home address" for purposes of section 552.117 and therefore may not be withheld under this exception. *See Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994)* (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). We also note that the requestor has a special right of access to her own information pursuant to section 552.023. *See Gov't Code § 552.023* (person has special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of information). Thus, the requestor's own home address, telephone number, social security number, and family member information may not be withheld under section 552.117(a)(3) and must be released to the requestor.

The social security numbers of those applicants who are not current or former TDCJ employees may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).<sup>1</sup> *See* Open Records Decision No. 622 (1994). These amendments

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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," and encompasses information protected by other statutes.

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 file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "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 by TDCJ pursuant to any provision of law enacted on or after October 1, 1990.

You also assert that portions of the submitted information must be withheld under section 552.130 of the Government Code, which excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. We have marked the information that TDCJ must withhold under section 552.130. We note, however, that the requestor has a special right of access under section 552.023 to her own section 552.130 information. *See* Gov't Code § 552.023.

You claim the submitted Department of Defense Form DD-214 is excepted from disclosure under section 552.140 of the Government Code, which provides, in relevant part, as follows:

- (a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

Gov't Code § 552.140(a). You state that the DD-214 form was submitted to TDCJ by an applicant, but you do not inform us whether TDCJ possessed the submitted DD-214 prior to September 1, 2003. Thus, if the submitted DD-214 form first came into the possession of TDCJ on or after September 1, 2003, TDCJ must withhold it under section 552.140. If, however, TDCJ possessed the submitted DD-214 form prior to September 1, 2003, section 552.140 does not apply in this instance, and TDCJ may not withhold the form under that exception.

Finally, we note that the submitted information also contains e-mail addresses obtained from members of the public. Section 552.137 makes certain e-mail addresses confidential and provides:

- (a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. E-mail addresses that are encompassed by subsection 552.137(c) are also not excepted from disclosure under section 552.137. Based on our review of the submitted information, we find that the e-mail addresses contained within this information are excepted from disclosure under section 552.137(a). We have marked the e-mail addresses that TDCJ must withhold under section 552.137(a) of the Government Code, unless TDCJ has received affirmative consent for the release of these e-mail addresses.

In summary, TDCJ may withhold interview questions one through four, and the corresponding responses, pursuant to section 552.122(b). TDCJ must withhold the home address and telephone number, social security number, and family member information of current or former employees pursuant to section 552.117(a)(3) as marked. We have also

marked the information that TDCJ must withhold under section 552.130. If the submitted DD-214 form first came into the possession of TDCJ on or after September 1, 2003, TDCJ must withhold it under section 552.140. The social security numbers of those applicants who are not current or former TDCJ employees may be excepted from disclosure under section 552.101 in conjunction with federal law. We have marked e-mail addresses that TDCJ must withhold under section 552.137(a) of the Government Code, unless TDCJ has received affirmative consent for the release of these e-mail addresses. The remaining submitted information must be released to the requestor, along with her own section 552.117 and section 552.130 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 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 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,



Jennifer E. Berry  
Assistant Attorney General  
Open Records Division

JEB/sdk

Ref: ID# 196430

Enc: Submitted documents

c: Ms. Robbie Stone  
4614 Mountain Drive  
Amarillo, Texas 79108  
(w/o enclosures)