ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2004

Mr. James M. Frazier III
Assistant General Counsel
Texas Department of Criminal Justice
P. O. Box 4004
Huntsville, Texas 77342-4004

OR2004-6980

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207361.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified job posting. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.117, 552.122, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information contains social security numbers that may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).[1] These amendments make confidential social security numbers and related records that are obtained or 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* Open Records Decision No. 622 (1994). The department has cited no law, nor are we are aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain social security numbers. Thus, we have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, the department should ensure that they were not obtained and are not

[1] Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.[2]

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(a)(3) excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(3). Based on your arguments and our review of the submitted information, we have marked the types of information that the department must withhold pursuant to section 552.117(a)(3) of the Government Code, if they apply to a current or former employee of the department.

You also claim that portions of the submitted information are 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. *See* Gov't Code § 552.122(b). 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). Additionally, when answers to test questions might reveal the substance of the questions themselves, the answers may be withheld from disclosure under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). Based on your arguments and our review of the submitted information, we have marked the submitted questions that constitute "test items" as contemplated by section 552.122(b). Accordingly, we conclude that the department may withhold these questions, as well as the recommended and actual responses associated with these questions, pursuant to section 552.122(b) of the Government Code.

We also note that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to: "(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; (2) a motor vehicle title or registration issued by an agency of this state; or (3) a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130(a)(1)-(3). Based on our review of the submitted information, we conclude that the department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

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[2] We note, however, that the requestor has an affirmative right of access to her own social security number. *See* Gov't Code § 552.023.

In addition, you claim that e-mail addresses that are contained within the submitted information are excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 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 email 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 have marked the e-mail addresses that are excepted from disclosure under section 552.137(a). Unless the department has received

affirmative consent for the release of these marked e-mail addresses, we conclude that it must withhold the addresses pursuant to section 552.137(a) of the Government Code.

Finally, you claim that a portion of the submitted information constitutes a Department of Defense Form DD-214 (the "DD-214 form") that is excepted from disclosure pursuant to section 552.140 of the Government Code. Section 552.140 provides in relevant part:

> (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). Section 552.140 provides that a military veteran's DD-214 form 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 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See* Gov't Code § 552.140(a), (b). You indicate that the department first came into possession of this form on April 1, 2004. Accordingly, we conclude that the department must withhold this marked form pursuant to section 552.140 of the Government Code.

In summary, social security numbers contained within the submitted information may be confidential under federal law. We have marked the types of information that the department must withhold pursuant to section 552.117(a)(3) of the Government Code, if they pertain to a current or former employee of the department. The department may withhold the test questions, as well as the recommended and actual responses associated with these questions, that we have marked pursuant to section 552.122(b) of the Government Code. The department must withhold the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. Unless the department has received affirmative consent for the release of the e-mail addresses that we have marked, the department must withhold the addresses pursuant to section 552.137(a) of the Government Code. The department must withhold the information that we have marked pursuant to section 552.140 of the Government Code. The department must release the remaining submitted information to the requestor.

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,

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 207361

Enc. Marked documents

c: Ms. Deborah G. Cockrell
3102 Osage Road
Gatesville, Texas 76528
(w/o enclosures)