



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2004

Ms. Jennifer Soldano
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701

OR2004-8692

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211029.

The Texas Department of Transportation (the "department") received a request for the following information pertaining to a specified job posting: (1) applications of the four top-ranked applicants, (2) the ranking scores of the five top-ranked applicants, (3) interview questions and answers for the two top-ranked applicants, and (4) the name of the selected applicant. You advise that you are withholding the Texas driver's license number contained in the requested information pursuant to a previous determination issued in Open Records Letter No. 2002-0465 (2002). *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). You claim that portions of the remaining submitted information are excepted from disclosure under sections 552.101, 552.117, 552.122, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that you did not submit the ranking scores for the five top-ranked applicants for our review or a document that indicates which applicant was selected for employment. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information

¹ We 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 ruling 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.

responsive to these aspects of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

You assert that Exhibit B is excepted from disclosure under 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. Open Records Decision No. 626 at 6 (1994). This office has generally found section 552.122 to apply in cases 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). After reviewing Exhibit B, we agree that interview questions 3 and 5 test an individual's knowledge in a particular area. Accordingly, the department may withhold these questions, their preferred answers, and the applicant's answers pursuant to section 552.122(b) of the Government Code. Interview question 7, however, along with its preferred answer and the applicant's answer, does not satisfy the section 552.122 criteria and must be released to the requestor.

You assert that portions of Exhibit C are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(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 timely elect to keep this information confidential pursuant to section 552.024. You state that the applicant at issue is a department employee "who elected to keep this personal information confidential prior to the date of this request." Therefore, we determine that the department must withhold the social security number and home address you have marked, as well as the additional information we have marked, in Exhibit C under section 552.117(a)(1).² We note, however, that information pertaining to the applicant's age is not within the scope of section 552.117(a)(1) and may not be withheld under that provision.

You also assert that a portion of Exhibit C is subject to section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The department must withhold the Texas driver's license information we have marked in Exhibit C under section 552.130.

²As we are able to make this determination, we do not address your argument under section 552.101.

Finally, you claim that Exhibit C contains an e-mail address that is subject to section 552.137 of the Government Code. Section 552.137 provides in part:

(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.

Gov't Code § 552.137(a), (b). Section 552.137 excepts certain e-mail addresses of members of the public who have not affirmatively consented to the release of the e-mail addresses. We note, however, that the information in Exhibit C does not include an e-mail address. Therefore, none of the information in Exhibit C may be withheld under section 552.137.

In summary, the department may withhold the information we have marked in Exhibit B under section 552.122(b). The department must withhold the marked social security number and home address you have marked, as well as the information we have marked, in Exhibit C under section 552.117(a)(1). The department must withhold the Texas driver's license information we have marked in Exhibit C under section 552.130. The remaining submitted information must be released 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,



Amy D. Peterson
Assistant Attorney General
Open Records Division

ADP/sdk

Ref: ID# 211029

Enc. Submitted documents

c: Dr. German Claros
1301 West 10th Street
Austin, Texas 78703
(w/o enclosures)