



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2005

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

OR2005-01067

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# 218366.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specific job posting, including the requestor's and selected applicant's job applications, interview documentation forms, and ratings and rankings. You claim that the requested information is excepted from disclosure pursuant to sections 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.

Initially, we note that you have not submitted the requestor's job application for our review. Therefore, we presume you have released it to the requestor. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

Section 552.122(b) of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" 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. Open Records Decision No. 626 at 6 (1994). The question of

whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* 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). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994). Having considered your arguments and reviewed the submitted information, we find that none of the submitted interview questions qualifies as a test item under section 552.122(b). Therefore, the department may not withhold any of the submitted information under section 552.122.

We next consider your claim under 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). We note that section 552.117(a)(3) is applicable only to information pertaining to an employee of the department. Therefore, pursuant to section 552.117(a)(3), the department must withhold the information we have marked pertaining to the selected applicant.

You claim that a portion of the remaining submitted information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts from disclosure information 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 the Texas motor vehicle information we have marked pursuant to section 552.130.

Finally, section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). Thus, the department must withhold the e-mail address we have marked under section 552.137 unless its owner has affirmatively consented to its release. *See* Gov't Code § 552.137(b).

In summary, the department must withhold the information we have marked pursuant to sections 552.117 and 552.130 of the Government Code. The personal e-mail address we have marked must be withheld under section 552.137 unless the department has received

affirmative consent to release this information. The remaining information must be released to the requestor.¹

Further, you request that this office issue a previous determination allowing the department to withhold the following categories of information:

1. 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;
2. except as authorized by chapter 730 of the Transportation Code, the license number, class, restrictions and expiration date of a driver's license issued by an agency of the State of Texas pursuant to section 552.130 of the Government Code; and
3. an e-mail address of a member of the public that is provided to the department on an application for employment.

With regard to request number one, this ruling shall serve as a previous determination under section 552.301(a) that 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 are excepted from disclosure under section 552.117(a)(3) of the Government Code. We note that you may only withhold this information for current or former employees of the department. We note, however, that section 552.117 protects employee privacy. Therefore, a former or current employee's section 552.117 information must be released to that person or that person's authorized representative. *See Gov't Code § 552.023.* We also note that because section 552.117(a)(3) deems social security numbers confidential in order to protect the privacy of living individuals, and not deceased persons, this aspect of section 552.117(a)(3) is purely personal and lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984). Thus, the department may not withhold a deceased employee's social security number pursuant to section 552.117(a)(3).

¹ We note that the information being released contains the requestor's social security number that may be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, the requestor has a special right of access to this information. *See Gov't Code § 552.023(b)* (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles). If the department receives another request for this information from a person who would not have a special right of access to this information, the department should resubmit this same information and request another decision. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).*

In response to request number two, this letter ruling shall serve as a previous determination under section 552.301(a) that the license number, class, restrictions and expiration date of a driver's license issued by an agency of the State of Texas is excepted from disclosure pursuant to section 552.130 of the Government Code. We note, however, 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 that person or that person's authorized representative. *See* Gov't Code § 552.023. Moreover, because section 552.130 was enacted to protect the privacy of an individual, the protection extinguishes upon the individual's death. *See generally* Attorney General Opinion H-917 at 3-4 (1976); *see also* Open Records Decision No. 272 at 1 (1981). Thus, the department may not withhold a deceased person's section 552.130 information. Although you also ask this office to issue a previous determination for an e-mail address of a member of the public that is provided to the department on an application for employment, we decline to issue such a previous determination at this time.

These previous determinations apply only to information requested in numbers one and two above. *See* Open Records Decision No. 673 at 7 (2001). 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 1) 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 under section 552.117(a)(3) of the Government Code, and 2) the license number, class, restrictions and expiration date of a driver's license issued by an agency of the State of Texas pursuant to section 552.130 of the Government Code. *See* Open Records Decision 673 at 7 (2001).

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 218366

Enc. Submitted documents

c: Mr. Gary Griffith
330 Oaklawn
Huntsville, Texas 77342
(w/o enclosures)