



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2005

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

OR2005-04875

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225554.

The Texas Department of Criminal Justice (the "department") received a request for certain information concerning a named employee, including disciplinary investigations. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the department only submitted portions of the employee's personnel file and test questions. We assume that, to the extent any additional responsive information existed when the department received the request for information, you have released it to the requestor. If not, then department must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 560 of the Government Code provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See* Gov't Code §§ 560.001 (defining "biometric identifier" to include fingerprints), 560.002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), 560.003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act). You do not inform us, and the submitted information does not indicate, that section 560.002 permits the disclosure of the submitted fingerprint information. Therefore, this information,

which we have marked, is confidential under section 560.003 of the Government Code, and the department must withhold it under section 552.101 of the Government Code.

Section 552.101 also encompasses federal law. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, the W-2 and W-4 tax forms are confidential under section 6103(a), and the department must withhold them under section 552.101 of the Government Code.

Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). However, we note that driving record information is not made confidential by the confidentiality provisions that govern CHRI. *See* Gov’t Code § 411.082(2)(B) (definition of CHRI does not include driving record information). Therefore, any CHRI obtained from DPS or any other criminal justice agency in the information at issue must be withheld under section 552.101 of the Government Code in conjunction with chapter 411, subchapter F of the Government Code.

You assert that the submitted test items and their responses are excepted 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).

Having reviewed the submitted text questions, we conclude that questions 1, 2, and 5 from the 2000 interview questions and questions 1, 3, and 5 from the 1998 interview questions are "test items" for purposes of section 552.122(b). Therefore, you may withhold these questions, and their recommended answers and responses, under section 552.122(b). However, we conclude that the remaining questions are not test items for purposes of section 552.122(b); therefore, you may not withhold these questions or their recommended answers and responses under section 552.122.

Finally, we note that some of the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(3) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of employees of the department, regardless of whether the employees complied with section 552.1175. Accordingly, the department must withhold the social security number we have marked under section 552.117(a)(3). *See* Open Records Decision No. 622 (1994).

To conclude, pursuant to section 552.101 of the Government Code, the department must withhold (1) the marked fingerprint information that is confidential under section 560.003 of the Government Code, (2) the W-2 and W-4 tax forms that are confidential under federal law, and (3) any CHRI obtained from DPS or any other criminal justice agency that is confidential chapter 411, subchapter F of the Government Code. The department must also withhold the social security number marked under section 552.117. The department may withhold questions 1, 2, and 5 from the 2000 interview questions and questions 1, 3, and 5 from the 1998 interview questions, as well as their recommended answers and responses, under section 552.122(b). The department must release the remaining information at issue.

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, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 225554

Enc. Submitted documents

c: Ms. Yolanda Torres  
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(w/o enclosures)