



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2005

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

OR2005-09874

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# 235380.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the requestor's application for employment with the department. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.122, 552.134, and 552.137 of the Government Code. You state that any additional responsive information will be released to the requestor. *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). We have considered the exceptions you claim and reviewed the submitted information.*

Initially, we address your comment that the submitted interview questions may not be responsive to this request for information. You state that you are uncertain whether the questions are responsive to this request because the requestor's "language . . . is a bit ambiguous."<sup>1</sup> A governmental body is required to make a good-faith effort to relate a request to information that it holds. *See Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). The interview questions you have submitted relate to the requestor's*

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<sup>1</sup>We note that the Act permits a governmental body to seek clarification from a requestor. *See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also Open Records Decision No. 663 at 5 (1999) (providing that time periods proscribed by section 552.301 are tolled during the clarification process).*

application for employment, which is the general subject of her request. Based on our review, we find that the department has made a good-faith effort to relate the request for information to the submitted information that the department maintains. Accordingly, we will address your arguments against disclosure of this 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). 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).

You contend that the submitted interview questions, responses, and recommended responses are excepted from disclosure under section 552.122(b). You state that the release of these test questions could result in "an increase in the cost of the selection process accompanied by a decrease in fairness and effectiveness." Having reviewed the information at issue, we agree that interview question 1 constitutes a "test item" as contemplated by section 552.122(b). We also find release of the responses and recommended response would tend to reveal the question itself. Therefore, you may withhold this question, as well as its responses and recommended response, under section 552.122(b). However, we find that questions 2, 3, 4, and 5 do not test an individual's or group's knowledge or ability in a particular area. Therefore, you must release questions 2, 3, 4, and 5 and their corresponding responses and recommended responses, to the requestor.

Next, we note that some of the remaining information is subject to sections 552.117, 552.130 and 552.147 of the Government Code.<sup>2</sup> Section 552.117(a)(3) excepts from public disclosure the home addresses, home telephone numbers, social security numbers, and family member information of current and former employees of the department, regardless of whether the employees complied with section 552.1175.<sup>3</sup> We note that an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under this section. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.117, 552.130, and 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that Open Records Letter No. 2005-1067(2005) was issued earlier this year and serves as a previous determination for this type of information maintained by the department.

be express and cannot be implied). We are unable to determine based on the information provided whether the other applicant was a current or former employee of the department at the time the request for information was received. Thus, if the other applicant was a current or former department employee when the request for information was received, the information we have marked must be withheld under section 552.117(a)(3).

However, if section 552.117 is inapplicable, we note that section 552.147 of the Government Code<sup>4</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The submitted information includes both the requestor’s and the other applicant’s social security numbers. Section 552.147 excepts information from disclosure in order to protect individuals’ privacy. Therefore, the requestor is entitled to her own social security number, and it may not be withheld from her under section 552.147. See Gov’t Code § 552.023 (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person’s privacy interest). Therefore, if the section 552.117 is inapplicable, the other applicant’s social security number must be withheld under section 552.147.<sup>5</sup>

Section 552.130 of the Government Code excepts from disclosure information that relates to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Accordingly, the department must withhold the Texas driver’s license number that we have marked pursuant to section 552.130.

Next, you claim that the submitted “additional offender information” form is excepted from disclosure under section 552.134 of the Government Code. This section relates to inmates of the department and provides in relevant part as follows:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov’t Code § 552.134(a). You state, and the submitted information reflects, that this form was obtained from the requestor and concerns an inmate confined in a facility operated by the department. Thus, we agree that section 552.134 is applicable to this information. We also find that section 552.029 is not applicable. Therefore, the “additional

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<sup>4</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

offender information” form is excepted from disclosure under section 552.134 of the Government Code and must be withheld.<sup>6</sup>

Lastly, section 552.137 of the Government Code 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). As such, the e-mail address you have highlighted must be withheld under section 552.137 unless its owner has affirmatively consented to its release. *See* Gov’t Code § 552.137(b).

In summary, the department may withhold the submitted test question 1 and its corresponding responses and recommended response, pursuant to section 552.122 of the Government Code; questions 2, 3, 4, and 5 and their corresponding responses and recommended responses must be released. If the other applicant was a current or former employee of the department at the time the request for information was received, the department must withhold the information we have marked under section 552.117(a)(3) of the Government Code. If section 552.117 does not apply, the department must withhold the other applicant’s social security number in accordance with section 552.147 of the Government Code. The Texas driver’s license number we have marked must be withheld under section 552.130 of the Government Code. The “additional offender information” form must be withheld under section 552.134 of the Government Code. The e-mail address you have highlighted must be withheld under sections 552.137. The remaining submitted information must be released.<sup>7</sup>

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 ten calendar days.

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<sup>6</sup>Because our conclusion under section 552.134 of the Government Code is dispositive for this information, we need not address your arguments concerning section 552.101 of the Government Code.

<sup>7</sup>Because some of this information is confidential with respect to the general public, if the department receives a future request for this information from a person other than the requestor or her authorized representative, the department should again seek our decision.

*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); *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 Office of the Attorney General 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. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 235380

Enc. Submitted documents

c: Ms. Veronica Aguirre  
P. O. Box 18072  
Dilley, Texas 78017  
(w/o enclosures)