



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2005

Ms. Amy D. Smith  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 7734

OR2005-09893

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 235378.

The Texas Department of Criminal Justice (the "department") received a request for eight categories of information regarding a specified job posting. The department claims that the information it has submitted is excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.<sup>1</sup>

Initially, we note that the information submitted by the department includes the personal information of applicants for positions with the department and a department employee. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without

---

<sup>1</sup>To the extent any remaining information responsive to this request existed on the date that the department received the instant request, we assume that the department has released it to the requestor. If the department has not released any such information, the department must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). Accordingly, the department must withhold the personal information of current or former employees of the department in accordance with Open Records Letter No. 2005-01067.

To the extent that the submitted social security numbers are not those of current or former department employees, they are excepted from public disclosure under section 552.147 of the Government Code,<sup>2</sup> which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the department must withhold the social security numbers contained in the submitted information under section 552.147.<sup>3</sup>

The department raises section 552.122 of the Government Code for a portion of the submitted information. Section 552.122 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).

The department contends that the submitted questions and responses are excepted from disclosure under section 552.122(b). After reviewing the information, we agree that questions 2 and 3 test an individual’s knowledge in a particular area and thus constitute “test items” as contemplated by section 552.122(b). Furthermore, we find that the answers to these questions might reveal the questions themselves. Therefore, pursuant to section 552.122 of the Government Code, the department may withhold questions 2 and 3, as well as the corresponding preferred and actual answers to these questions. However, the

---

<sup>2</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (codified at Tex. Gov't Code § 552.147).

<sup>3</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.

remaining questions, as well as the corresponding preferred and actual answers to these questions, do not qualify as test items under section 552.122(b) and must be released.

We note that the submitted information contains Texas motor vehicle record information which is subject to section 552.130.<sup>4</sup> 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 information we have marked pursuant to section 552.130.

Next, you claim that some of the submitted information is confidential under section 552.137 of the Government Code. In relevant part, section 552.137 provides that, "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). We note that 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 addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The department must withhold the e-mail addresses that we have marked under section 552.137, unless the department receives consent for their release.

In summary, the department must withhold (1) the personal information of current or former department employees in accordance with Open Records Letter No. 2005-01067; (2) the social security number of an individual who is not a current or former department employee under section 552.147 of the Government Code; (3) questions 2 and 3, and their corresponding preferred and actual responses, pursuant to section 552.122(b) of the Government Code; (4) the information we have marked under section 552.130; and (5) the information we have marked under section 552.137, unless the department receives consent for their release. The remaining 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

---

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos.* 481 (1987), 480 (1987), 470 (1987).

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).

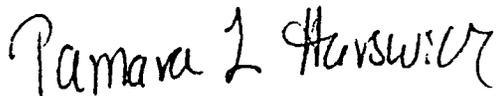
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 10 calendar days of the date of this ruling.

Sincerely,



Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 235378

Enc. Submitted documents

c: Mr. Lawrence Fox  
801 CR 335  
Burnet, Texas 78611  
(w/o enclosures)