



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2005

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

OR2005-11196

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# 237975.

The Texas Department of Criminal Justice (the "department") received a request for information related to two specified job postings.<sup>1</sup> You state that some responsive information has been or will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

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<sup>1</sup>You state that the department sought and received clarification from the requestor regarding her request. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request)

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 Investigator II interview questions 3-5 and Human Resources Specialist II interview questions 2 and 4-5 qualify as test items under section 552.122(b). We also find that the release of the model or actual answers to these questions would tend to reveal the questions themselves. We therefore determine the department may withhold questions 3-5 pertaining to the Investigator II position and questions 2 and 4-5 pertaining to the Human Resources Specialist II position, along with the recommended and actual responses, pursuant to section 552.122(b). We find, however, that the remaining questions are general questions evaluating an applicant's general workplace skills and overall suitability for employment and do not test any specific knowledge of an applicant. Therefore, the remainder of the questions do not qualify as test items and may not be withheld under section 552.122(b).

You claim that some of the submitted information is confidential under section 552.137 of the Government Code. This section 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). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the relevant members of the public have affirmatively consented to the release of the e-mail addresses at issue. Therefore, the department must withhold the e-mail addresses that we have marked under section 552.137.

We note that the submitted information includes the personal information of applicants for positions with the department. 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 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)). However, section 552.117(a)(3) deems information confidential only in order to protect an individual's privacy. Therefore, the requestor has a special right of access pursuant to section 552.023 to her own information that would otherwise be excepted from disclosure to the public under section 552.117(a)(3). *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Thus, the department must release the requestor's personal information to her. However, to the extent

that the remaining applicants are current or former employees of the department, the department must withhold their personal information 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, we note that section 552.147 of the Government Code<sup>2</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.<sup>3</sup> Because section 552.147 protects individual privacy interests, the requestor has a right to access her own social security number under section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). The department must, however, withhold the remaining applicants’ social security numbers under section 552.147.<sup>4</sup>

We note that the submitted information contains Texas motor vehicle record information. Section 552.130 of the Government Code 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.

In summary, the department may withhold Investigator II interview questions 3-5 and Human Resources Specialist II interview questions 2 and 4-5, along with the recommended and actual responses, pursuant to section 552.122(b) of the Government Code. The e-mail addresses we have marked must be withheld under section 552.137 of the Government Code. To the extent that the applicants other than the requestor are current or former employees of the department, the department must withhold their personal information in accordance with Open Records Letter No. 2005-01067. Even if those applicants are not current or former employees of the department, their social security numbers must be withheld under section 552.147 of the Government Code. The Texas motor vehicle record information we have

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<sup>2</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov’t Code § 552.147).

<sup>3</sup>This office will raise mandatory exceptions 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>4</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.

marked must be withheld under section 552.130 of the Government Code. The remaining information must be released to the requestor.<sup>5</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 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.

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<sup>5</sup>Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the department should again seek our decision.

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 237975

Enc. Submitted documents

c: Ms. Donna Crum  
P.O. Box 323  
Texline, Texas 79087  
(w/o enclosures)