



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2006

Mr. G. Cole Spainhour
Assistant County Attorney
Williamson County Attorney's Office
405 Martin Luther King #7
Georgetown, Texas 78626

OR2006-03942

Dear Mr. Spainhour:

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# 246753.

The Williamson County Emergency Medical Services Department (the "department") received a request for information pertaining to the requestor and his application for employment with the department. You claim that the requested information is excepted from disclosure under sections 552.122, 552.137, and 552.147 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 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).

In this instance, you contend that the submitted Scantron-type answer sheet, practical situation scoring sheets, and the overall score sheet for the applicant pool are excepted from disclosure under section 552.122(b) of the Government Code. You state that the questions to which the answer sheet pertains will likely be used in future testing and that the answer sheet reveals those questions. Next, you state that the practical situation scoring sheets reveal the “areas of knowledge that the graders use in their evaluation of applicants.” Finally, you state that the overall score sheet for the applicant pool “contains macros and formulas which could be used to ‘reverse-engineer’ answers and areas of evaluation[.]” You argue that all this information should be withheld under section 552.122 because its release would compromise the validity and integrity of the testing process. Having considered your arguments and reviewed the information at issue, we find that the release of some of the practical situation scoring sheets would reveal the content of the practical situation portion of the examination. Therefore, the department may withhold this information, which we have marked, under section 552.122. We note, however, that the remainder of the practical situation scoring sheets, as well as the Scantron-type answer sheet, do not contain the examination questions or corresponding answers, nor do they provide any indication of the nature or content of the examination questions or corresponding answers. Therefore, we find that they are not protected under section 552.122. Furthermore, we find that you have not demonstrated, nor does the information reflect, how the release of the overall score sheet for the applicant pool would compromise the effectiveness of future examinations. *See Gov’t Code § 552.301(e)* (governmental body must provide comments explaining why exceptions raised should apply to information requested). Therefore, we find that the overall score sheet for the applicant pool is not protected under section 552.122.

Next, you assert section 552.137 of the Government Code for the submitted e-mail addresses. 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 specifically excluded by section 552.137(c). *See id.* § 552.137(a)-(c). The e-mail addresses we have marked do not appear to be of a type specifically excluded by section 552.137(c). Unless the relevant individuals have consented to their release, we determine that the department must withhold the e-mail addresses we have marked.

Next, you raise section 552.147 of the Government Code for the submitted social security numbers. Section 552.147 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 we have marked in the submitted information under section 552.147.¹ We note, however, that the department may not withhold the requestor’s social security number because he has a special right of access to such information. *See id.*

¹We 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.

§ 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles).

Next, we note that the submitted information contains the applicants' home addresses and personal phone numbers. We understand that some of these applicants were hired by the department. Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses and personal telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). A governmental body may only withhold information under section 552.117(a)(1) if the employee in question made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. Therefore, if the hired applicants made a timely election under section 552.024, the department must withhold their home addresses and personal phone numbers under section 552.117(a)(1). However, the department may not withhold this information under section 552.117 if the applicant was not hired or if a timely election was not made.

In summary, the department may withhold the portions of the practical situation scoring sheets that we have marked under section 552.122 of the Government Code. The department must withhold the e-mail addresses and social security numbers that we have marked under sections 552.137 and 552.147 of the Government Code, respectively. The home addresses and personal phone numbers of the hired applicants must be withheld under section 552.117(a)(1) of the Government Code if that section is applicable. The remaining information must be released.

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.

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,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 246753

Enc. Submitted documents

c: Mr. Matthew Kirke Phillips
3102 Cutaway Cove
Round Rock, Texas 78681
(w/o enclosures)