



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2007

Ms. Patricia Fleming
Assistant General Counsel
TDCJ - Office of the General Counsel
P. O. Box 4004
Huntsville, Texas 77342

OR2007-04356

Dear Ms. Fleming:

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# 276710.

The Texas Department of Criminal Justice (the "department") received a request for the work history and qualifications of the applicant selected for a specified department job opening, as well as the questions asked of, and responses given by, all applicants for the job opening.¹ You state the department will release some information. 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 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

¹You inform us the requestor clarified her requests for information. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request for information).

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) (construing statutory predecessor). 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); ORD 626 at 8.

You seek to withhold interview information including eight interview questions, as well as the model and actual answers to those questions, under section 552.122. Based on your representations and our review of the information at issue, we find that all eight questions qualify as test items under section 552.122(b). We also find that the release of the model and actual answers to these questions would tend to reveal the questions themselves. We therefore conclude that the department may withhold these questions, along with the submitted model and actual answers to those questions, under section 552.122. However, we conclude the remaining interview information for which you claim section 552.122 relates to the evaluation of an individual’s overall job suitability and not that individual’s knowledge or ability in a particular area. Thus, this remaining interview information does not qualify as a test item under section 552.122(b) and must be released. We have marked the information at issue accordingly.

Section 552.137 of the Government Code exempts 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 address we have marked does not appear to be of a type specifically excluded by section 552.137(c). In addition, you have not informed us that the department has received consent for the release of this e-mail address. Therefore, the department must withhold this e-mail address under section 552.137.

We note that a portion of the submitted information is subject to sections 552.117 and 552.130 of the Government Code.² Section 552.117(a)(3) of the Government Code exempts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department regardless of whether that employee made an election under section 552.1175 of the Government Code. The department must withhold the home telephone number and social security number we have marked under section 552.117 of the Government Code. We note that an individual’s personal post office box number is not a “home address” and therefore may not be withheld under section 552.117. *See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (“The legislative history of section 552.117(1)(A) makes clear

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

that its purpose is to protect public employees from being harassed *at home*. See House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).” (Emphasis added.); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

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.” Gov’t Code § 552.130. The department must withhold the Texas driver’s license number we have marked in the submitted information under section 552.130.

In summary, the department may withhold the information we have marked under section 552.122 of the Government Code. The department must withhold the information we have marked under sections 552.117, 552.130 and 552.137 of the Government Code. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 276710

Enc. Submitted documents

c: Ms. Adrian Yanta
2726 CR 319
Runge, Texas 78151
(w/o enclosures)