



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 13, 2007

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

OR2007-07430

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#281010.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the interviews for the position of *HR Specialist II - Review and Release Processing*. You state that some of the responsive information 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.

Initially, we note that a portion of the submitted information may be excepted under 552.117 of the Government Code.¹ Section 552.117(a)(1) excepts from disclosure the current and former home addresses and 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. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the department must withhold the home addresses and home telephone numbers that pertain to current or former employees of the department who elected to keep such information confidential prior to the department's receipt of the request for information. Such information may not be withheld for individuals who did not

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

make a timely election. Accordingly, the department must withhold the information we have marked if section 552.117 of the Government Code applies.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or 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. *Whether information falls within the section 552.122 exception 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 claims that the submitted questions "are intended to display the technical expertise of the applicant." The department further states that the position at issue is "filled through a selection process that includes structured interviews in which the same specific questions are asked of all the applicants." The department states that release of the information at issue would result in "an increase in the cost of the selection process accompanied by a decrease in fairness and effectiveness." Having considered your arguments and reviewed the submitted information, we find that question number 5 qualifies as a test item under section 552.122(b) of the Government Code. We also find that the release of the recommended and actual answers to this question would tend to reveal the question itself. Therefore, the department may withhold question number 5, along with the corresponding answers, pursuant to section 552.122(b) of the Government Code. However, we find that the remaining interview questions are general questions evaluating applicants' individual abilities, personal opinions, and subjective ability to respond to a particular situation, and do not test any specific knowledge of an applicant. Accordingly, the remaining interview questions, as well as the answers to those questions, may not be withheld from disclosure under section 552.122 of the Government Code.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Accordingly, you must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

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). *Id.* § 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 we have marked are not of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the department must withhold the marked e-mail addresses in accordance with section 552.137 unless the department receives consent for their release.

In summary, the department must withhold the following: (1) the information we have marked, to the extent that section 552.117 of the Government Code applies to the individuals at issue; (2) question number 5, and the corresponding answers under section 552.122 of the Government Code; (3) the Texas motor vehicle record information we have marked under section 552.130 of the Government Code; and (4) the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.²

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

²We note that the information being released contains a social security number. 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.

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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eeg

Ref: ID# 281010

Enc. Submitted documents

c: Mr. Joseph E. Parsons
12708 Scofield Farms Drive
Austin, Texas 78727
(w/o enclosures)