



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2007

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

OR2007-10487

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# 286699.

The Texas Department of Criminal Justice (the "department") received a request for all information relating to the decision and selection process regarding a specified job posting. You state that some of the requested information either has been or will be released. You claim that the remaining information is excepted from disclosure under sections 552.122, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and have reviewed 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. *Id.* at 6. 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); ORD 626 at 8.

You seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122. Having considered your arguments and

reviewed the information at issue, we conclude that interview questions 3 and 6 qualify as test items for the purposes of section 552.122(b). We also conclude that the release of the recommended and actual answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that the department may withhold interview questions 3 and 6, along with the recommended and actual answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining questions and the applicants' closing remarks are general questions or statements evaluating an applicant's general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining questions and the applicants' closing remarks are not test items under section 552.122(b). The department may not withhold these questions, or the preferred or actual answers to these questions or the applicants' closing remarks, pursuant to section 552.122 of the Government Code.

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 of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the remaining documents. Therefore, the department must withhold the e-mail addresses we have marked under section 552.137.

Section 552.140 of the Government Code provides in relevant part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

Id. § 552.140(a). Section 552.140 provides that a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a), (b). You state that the department first came into possession of the submitted DD-214 form after September 1, 2003. Thus, we conclude that the department must withhold the submitted DD-214 form under section 552.140.

We note that portions of the submitted information are excepted under sections 552.117 and 552.130 of the Government Code.¹ Section 552.117(a)(3) excepts from disclosure the

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

present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(3). Therefore, the department must withhold the information we have marked pursuant to section 552.117(a)(3).

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(a). We note that section 552.130 only applies to Texas motor vehicle record information. Therefore, the department may not withhold out-of-state motor vehicle record information on this basis. Accordingly, the department must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the department may withhold interview questions 3 and 6, along with the recommended and actual answers to those questions, under section 552.122 of the Government Code. The department must withhold the e-mail addresses we have marked pursuant to section 552.137, and the DD-214 form under section 552.140 of the Government Code. The department must withhold the information that we have marked pursuant to section 552.117(a)(3) of the Government Code. Finally, the department must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code. The remaining information must be released.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 submitted information contains social security numbers. 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. *See* Gov't Code § 552.147.

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,

A handwritten signature in cursive script that reads "Nikki Hopkins". The signature is written in black ink and is positioned above the typed name and title.

Nikki Hopkins
Assistant Attorney General
Open Records Division

NH/mcf

Ref: ID# 283722

Enc. Submitted documents

c: Mr. Norris Spivey
1702 FM 980
Huntsville, Texas 77342
(w/o enclosures)