



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 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

OR2007-10621

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# 286758.

The Texas Department of Criminal Justice (the "department") received a request for the applications, interview questions, applicant responses, recommended responses, and interviewer justifications of selection for a specified employment position. You state you will release a portion of the requested information. You claim that the submitted 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 reviewed the submitted information.

Initially, we note that the submitted information includes the personal information of one of the applicants for the position 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 section 552.301(a)). Therefore, to the extent that the applicant is a current or former employee of the department, the department must withhold

her personal information, which we have marked, in accordance with Open Records Letter No. 2005-01067.

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. 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).

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 1 through 8 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 1 through 8, along with the recommended and actual responses to those questions, under section 552.122 of the Government Code. We find, however, that question 9 is a general question evaluating an applicant’s general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and does not test any specific knowledge of an applicant. Accordingly, we determine that question 9 is not a test item under section 552.122(b). The department may not withhold this question, or the preferred or actual answers to this question, pursuant to section 552.122 of the Government Code.

We note that some of the submitted information is subject to section 552.130 of the Government Code.¹ This section 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 [.]

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).

Gov't Code § 552.130(a)(1). Accordingly, you must withhold the Texas driver's license 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). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the relevant member of the public has affirmatively consented to the release of the e-mail address at issue. Therefore, the department must withhold the e-mail address that 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 do not indicate when the department came into possession of the submitted DD-214 form. Therefore, if this form came into the possession of the department on or after September 1, 2003, then the department must withhold this form under section 552.140. Otherwise, the form must be released, subject to the marking we have made under section 552.117 of the Government Code.

In summary, to the extent that the applicant is a current or former employee of the department, the department must withhold the personal information we have marked in accordance with Open Records Letter No. 2005-01067. The department may withhold interview questions 1 through 8, and the recommended and actual answers to these questions, under section 552.122 of the Government Code. The department must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The department must withhold the marked e-mail address under section 552.137 of the Government Code. If the submitted DD-214 form came into the possession of the department on or after September 1, 2003, the department must withhold this form under section 552.140 of the Government Code; otherwise, the form must be released, subject to

the marking we have made under section 552.117 of the Government Code. The remaining submitted 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 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).

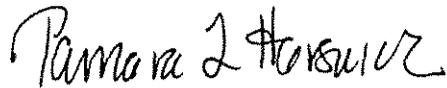
Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

²We note that even if the applicant is not a current or former employee of the department, her social security number may be withheld under section 552.147(b) of the Government Code. This section 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.

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 black ink that reads "Tamara L. Harswick". The signature is written in a cursive, flowing style.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/eeg

Ref: ID# 286758

Enc. Submitted documents

c: Ms. Peggy Haggard
10635 FM 355
Trinity, Texas 75862
(w/o enclosures)