



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2007

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

OR2007-15151

Dear Ms. Fleming:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your requests were assigned ID# 295136.

The Texas Department of Criminal Justice (the "department") received requests for information pertaining to two posted positions for food service manager. The department claims the requested information is excepted from required public disclosure by sections 552.122, 552.137, and 552.140 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.122(b) 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). Additionally, when answers to test questions might reveal the substance of the questions themselves, the answers may be withheld from disclosure under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). Having reviewed the submitted questions, we agree questions 1 - 5 are "test items" as

contemplated by section 552.122(b). Therefore, you may withhold the questions and their corresponding answers under section 552.122(b).

Section 552.130 of the Government Code excepts from public disclosure information relating to a Texas driver's license number. Thus, the department must withhold the marked information relating to Texas drivers' licenses under section 552.130.

Next, the department asserts section 552.137 excepts the private e-mail addresses from public disclosure. Section 552.137 requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). Thus, we agree the department must withhold the private e-mail addresses we marked pursuant to section 552.137 if the individuals at issue have not affirmatively consented to the release of their e-mail addresses.

Lastly, the department contends the DD-214 forms are confidential under section 552.140 of the Government Code. 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 Gov't Code* § 552.140(a), (b). The department explains the applicants submitted the DD-214 forms for its interviews on May 17 and July 31, 2007. Because the department came into possession of the forms after September 1, 2003, we conclude the department must withhold them under section 552.140.

In summary, the department may withhold questions 1 - 5 and their corresponding answers under section 552.122. The department must withhold the information related to Texas drivers' licenses under section 552.130, the private e-mail addresses under section 552.137 if the persons at issue did not consent to their release, and the DD-214 forms under section 552.140. The department must release the remaining information.¹

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

¹We 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.

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).

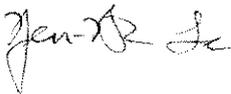
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 295136

Enc. Marked documents

c: Mr. Winchell L. Semien
P.O. Box 155202
Lufkin, Texas 75915
(w/o enclosures)