



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 10, 2007

Mr. Thomas D. McClure  
Assistant General Counsel  
Texas Department of State Health Services  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756

OR2007-16286

Dear Mr. McClure:

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# 297052.

The Texas Department of State Health Services (the "department") received a request for information regarding a specified job opening. You state that you will release some information to the requestor, but claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 of the Government Code. *See* Gov't Code § 552.117. 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). You do not inform us nor provide documentation showing that the employee whose information is at issue timely elected confidentiality under section 552.024. Thus, if the employee timely elected to keep her information confidential, you must withhold the

information you have marked under section 552.117(a)(1) of the Government Code. However, you may not withhold this information under section 552.117(a)(1) if the employee at issue did not make a timely election.<sup>1</sup>

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).

You claim that some of the submitted information is excepted from disclosure under section 552.122(b). Having considered your argument and reviewed the information at issue, we agree that the interview questions you have marked qualify as test items under section 552.122(b) of the Government Code. We also find that the release of the model and actual answers to these questions would tend to reveal these questions. Therefore, the department may withhold the information you have marked pursuant to section 552.122(b) of the Government Code.

Section 552.130 of the Government Code requires the district attorney to withhold "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; or a personal identification document issued by an agency of this state or a local agency authorized to issue an identification document." Gov't Code § 552.130. Except for the information we have marked for release, the department must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

In summary, if the employee at issue timely elected confidentiality of her information, the department must withhold the information you have marked under section 552.117 of the Government Code. The department may withhold the information you have marked under section 552.122 of the Government Code. Except for the information we have marked for

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<sup>1</sup> We note this information contains social security numbers. To the extent this information is not protected under section 552.117, 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.

release, the department must withhold the information you have marked under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

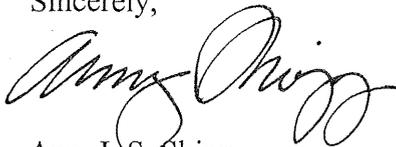
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Amy Shipp", written in a cursive style.

Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/mcf

Ref: ID# 297052

Enc. Submitted documents

c: Ms. Welda Caswell  
1911 Scofield Lane  
Austin, Texas 78727  
(w/o enclosures)