



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2008

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

OR2008-07537

Dear Ms. Towe:

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# 311679.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to the interview results for a specified day of a specified job posting, including "the questions and answers of the interview, along with the rating methodology used in the selection of applicants." You claim that the requested 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 some of the submitted information may be subject to section 552.117 of the Government Code.¹ Section 552.117(a)(3) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department or of the predecessor in function of the department or any division 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). In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold information under section 552.117(a)(3) without the necessity of requesting a decision from this office under the Act. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Therefore, to the extent that the applicants are

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

current or former employees of the department, the department must withhold their personal information, which we have marked, under section 552.117(a)(3).²

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *See* 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. Open Records Decision No. 626 at 6. This office has generally found section 552.122 to apply in cases where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* ORD 626 at 8.

You contend that the submitted interview questions, as well as the model and actual answers to these questions are excepted from disclosure under section 552.122(b) of the Government Code. You argue that release of these test items would be disadvantageous to the selection process and would jeopardize the effectiveness of future examinations. Having considered your arguments and reviewed the submitted information, we find that questions one through four qualify as test items under section 552.122(b). We also find that release of the model and actual answers would tend to reveal the questions themselves. Therefore, the department may withhold these questions, along with the model and actual answers, pursuant to section 552.122(b). We find, however, that question 5 and the "applicant's closing remarks" are general questions or statements evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, question five and the "applicant's closing remarks" are not excepted from disclosure under section 552.122 of the Government Code.

We also note that some of the submitted information is subject to section 552.130 of the Government Code. 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. The department must withhold the Texas driver's license information, which we have marked, pursuant to 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

²In the event that the social security number is not that of a department employee, we note that 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.

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). Therefore, the department must withhold the e-mail addresses you have marked, and the additional addresses we have marked, in accordance with section 552.137, unless the department receives consent for its release.

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). Upon review of the submitted information, we find that it does not contain DD-214 forms that are confidential under section 552.140. Accordingly, the department may not withhold any of the remaining information under section 552.140.

In summary, to the extent that the applicants are current or former employees of the department, the department must withhold their personal information, which we have marked, under section 552.117(a)(3) of the Government Code. The department may withhold interview questions one through four under section 552.122(b) 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 e-mail addresses you have marked, and the additional addresses we have marked, under section 552.137 of the Government Code. The remaining information must be released.

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).

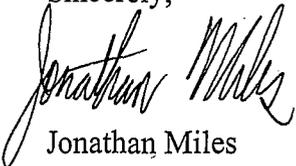
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 311679

Enc. Submitted documents

c: Mr. Park E. Atatah
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(w/o enclosures)