



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2008

Mr. Paul J. Mascot  
Assistant General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2008-11264

Dear Mr. Mascot:

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# 319210.

The Texas Department of State Health Services (the "department") received a request for information pertaining to the Accountant II position in the Claims Processing Unit, including applications of interviewees, interview questions, in-basket exercises, as well as responses by interviewees, and reference checks for the hired individuals. You state that some information has been or will be released. You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.122, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.117(a)(1) of the Government Code 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. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1)

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<sup>1</sup>We note that you have redacted social security numbers from the submitted information. 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. Gov't Code § 552.147(b).

must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the department must withhold personal information that pertains to a current or former employee of the district who elected, prior to the department's receipt of the request for information, to keep such information confidential. You state that the department employees concerned timely requested confidentiality under section 552.024. Accordingly, the department must withhold the information you have marked under section 552.117(a)(1).

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); ORD 626 at 8.

The department claims that a portion of the remaining information is excepted from disclosure under section 552.122(b). You state that the interview questions at issue and the in-basket exercise measure the knowledge or ability of an applicant in a particular area and that the release of those test items might compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we find that interview questions 10, 11, and the in-basket exercise qualify as test items under section 552.122(b) of the Government Code. Therefore, the department may withhold questions 10, 11, and the in-basket exercise, along with the recommended and actual answers to those questions and the exercise, which you have highlighted, pursuant to section 552.122(b) of the Government Code.

Next, section 552.130 of the Government Code 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." Gov't Code § 552.130(a)(1). Accordingly, the department must withhold the information you have marked, except as we have marked for release, under section 552.130.

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). *See* Gov't Code § 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 member of the public has affirmatively consented to the release of the submitted e-mail address. Therefore, the

department must withhold the e-mail address we have marked under section 552.137 of the Government Code.

In summary, the department must withhold the information you have marked under section 552.117 of the Government Code. The department may withhold questions 10, 11, and the in-basket exercise, along with the recommended and actual answers to those questions and the exercise, pursuant to section 552.122(b) of the Government Code. The department must withhold the information you have marked, except as we have marked for release, under section 552.130 of the Government Code. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code. As you raise no other exceptions to disclosure, the remaining submitted 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). If the governmental body does not file suit over 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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/mcf

Ref: ID# 319210

Enc. Submitted documents

c: Mr. Peter Geraths  
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Admin. Team  
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(w/o enclosures)