



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 17, 2009

Ms. Linda S. Wiegman  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2009-02029

Dear Ms. Wiegman:

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# 335099.

The Department of State Health Services (the "department") received a request for all applications, interview questions, exercises, responses of applicants, scoring sheets, reference checks on hired individuals, justifications for hiring the selected individual, and indications of why the requestor was not hired regarding a specified job posting. You state that you have released a portion of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.122, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the present 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 timely request that such information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department may only withhold information under section 552.117(a)(1) on behalf of

current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that the individuals whose information is at issue have elected to keep their home addresses, home telephone numbers, social security numbers, and family member information confidential prior to the date the department received the current request for information. Thus, the department must withhold the information we 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.

You state that the interview questions at issue and the in-basket exercise measure the knowledge, skills, and 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 the interview questions and the in-basket exercise you have marked qualify as test items under section 552.122(b) of the Government Code. Therefore, the department may withhold those questions and the in-basket exercises, along with the actual answers to those questions and exercises, which you have marked, 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 Texas driver's license information you have marked 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 addresses at issue are not of a type specifically excluded by section 552.137(c). You state that the individuals whose e-mail addresses are at issue have not consented to the release of their e-mail addresses. Therefore, the department must

withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

We note that you have marked social security numbers under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. *Id.* § 552.147. Therefore, the department may withhold the social security numbers you have marked pursuant to section 552.147 of the Government Code.<sup>1</sup>

In summary, (1) the department must withhold the information we have marked under section 552.117(a)(1) of the Government Code; (2) the department may withhold the questions and answers to the interview questions and in-basket exercises you have marked pursuant to section 552.122(b); (3) the department must withhold the Texas driver’s license information you have marked under section 552.130; (4) the department must withhold the e-mail addresses you have marked under section 552.137; and (5) the department may withhold the social security numbers you have marked pursuant to section 552.147. The remaining information must be released to the requestor.<sup>2</sup>

You also ask this office to issue a previous determination permitting the department to withhold information pursuant to sections 552.117, 552.130, and 552.137 of the Government Code. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>1</sup>We note that section 552.147(b) 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.

<sup>2</sup>We note the information being released includes the requestor’s home address, home telephone number, and Texas driver’s license information. Ordinarily, this information would be withheld under sections 552.117 and 552.130 of the Government Code. However, because this information belongs to the requestor, it may not be withheld in this instance. *See* Gov’t Code § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). If the department receives another request for this particular information from a different requestor, then the department should again seek a decision from this office.

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Chris Sterner".

Christopher D. Sterner  
Assistant Attorney General  
Open Records Division

CDSA/eeg

Ref: ID# 335099

Enc. Submitted documents

c: Requestor  
(w/o enclosures)