



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

Mr. Erik Brown
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-05277

Dear Mr. Brown:

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# 340771.

The Texas Department of Criminal Justice (the "department") received a request for "all HR related documents" concerning a job posting for the position of Parole Officer IV, including documents relating to the selected applicant and any written communications related to the job posting. You state that the some of the requested information has been, or will be made, available to the requestor. You claim that the submitted 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 the submitted information includes the personal information of applicants for the parole officer position with the department. The submitted information also includes Texas motor vehicle record information. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). Therefore, to

the extent the applicants are current or former employees of the department, the department must withhold the personal information we have marked in accordance with Open Records Letter No. 2005-01067.¹ Open Records Letter No. 2005-01067 also authorizes the department to withhold certain Texas motor vehicle record information subject to section 552.130 of the Government Code without the necessity of requesting an attorney general decision with regard to the applicability of this exception. Thus, the department must withhold the motor vehicle record information we have marked in accordance with this previous determination.

A portion of the submitted information is comprised of interview questions and answers. 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. *See* Open Records Decision No. 626 at 6. 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 have submitted the applicants' interview questions and answers for the Parole Officer IV position. You state that the submitted interview questions are "intended to display the technical expertise of the applicant" and that the department prefers to use similar questions from one position selection to the next. Further, you argue that release of the information at issue could compromise future interviews. You seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122. Having considered your arguments and reviewed the submitted information, we conclude that interview questions 1, 5, 6, and 7 qualify as test items for the purposes of section 552.122(b). We also find that release of the model and actual answers to these test items would tend to reveal the questions themselves. Therefore, the department may withhold this information pursuant to section 552.122(b). However, we find that the remaining interview questions and the applicants' closing remarks are general questions and 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

¹In the event that the social security numbers we have marked are not those of current or former department employees, 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. *See* Gov't Code § 552.147.

applicant. Accordingly, these questions and their answers are not excepted from disclosure under section 552.122 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 address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses that we have marked are not a type specifically excluded by section 552.137(c). Therefore, unless the department receives consent for their release, the e-mail addresses we have marked must be withheld under section 552.137. *See id.* § 552.137(b).

You contend that a portion of the information at issue consists of DD-214 forms subject to 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 id.* § 552.140(a), (b). The information at issue indicates that the department first came into possession of the DD-214 forms after September 1, 2003. Thus, we conclude the department must withhold the DD-214 forms that it has marked pursuant to section 552.140.

In summary, the department must withhold the information we have marked pursuant to section 552.117 of the Government Code and Open Records Letter No. 2005-01067, to the extent it applies to current or former employees of the department. The department must withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code and Open Records Letter No. 2005-01067. The department may withhold interview questions 1, 5, 6, and 7, along with the model and actual answers to those questions, under section 552.122 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The department must withhold the DD-214 forms under section 552.140 of the Government Code. The remaining information must be released.

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, 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 "Pam Wissemann".

Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/eeg

Ref: ID# 340771

Enc. Submitted documents

c: Requestor
(w/o enclosures)