



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 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

OR2009-07269

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# 346554.

The Texas Department of Criminal Justice ("TDCJ") received a request for all information related to "Selection Packet for Posting # 004149SO." You state that TDCJ has released some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . 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. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) 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 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 information at issue, we conclude that interview questions one through seven qualify as test items for the purposes of section 552.122(b). We also conclude that release of the recommended and actual answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that TDCJ may withhold interview questions one through seven, along with the recommended and actual answers thereto, under section 552.122 of the Government Code. We find, however, that the remaining interview question and the applicants' closing remarks are general questions evaluating an applicant's general workplace skills and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining question and the applicants' closing remarks are not test items under section 552.122(b) and therefore may not be withheld on this basis.

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). None of the e-mail addresses within the submitted information appear to be of a type excluded by subsection (c) and you do not inform us that the owners of these e-mail addresses have given consent for release. Therefore, TDCJ must withhold the e-mail addresses we have marked under section 552.137.

We note that the submitted information also contains Texas driver's license numbers. 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[.]"<sup>1</sup> *Id.* § 552.130(a)(1). Accordingly, TDCJ must withhold the Texas driver's license information we have marked pursuant to section 552.130.

In summary, TDCJ: (1) may withhold interview questions one through seven, along with the recommended and actual answers thereto, under section 552.122 of the Government Code; (2) must withhold the e-mail addresses we have marked under section 552.137 of the Government Code; (3) must withhold the Texas driver's license numbers we have marked

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under section 552.130 of the Government Code; and (4) must release the remainder of the submitted information.<sup>2</sup>

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), 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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/cc

Ref: ID# 346554

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>2</sup>We note that the submitted information contains social security numbers belonging to persons other than the requestor. 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).