



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 4, 2010

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

OR2010-01745

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# 369967.

The Texas Department of Criminal Justice (the "department") received a request for several categories of information pertaining to job posting number 051136PP34 for Parole Officer III. You state some of the requested information has been or will be released to the requestor. You claim a portion of the remaining information is 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.

Initially, we note a submitted page of an employment application includes the personal information of the applicant selected for the Parole Officer III position with the department. The application 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 applicant is a current or former employee of the department, the department must withhold the personal information we have marked in accordance with Open Records Letter No. 2005-01067. 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 Texas motor vehicle record information we have marked in accordance with this previous determination.

Section 552.122(b) of the Government Code exempts from required public 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. 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 seek to withhold the submitted interview questions, as well as the actual and recommended responses to those questions, under section 552.122 of the Government Code. You state 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. Having considered your arguments and reviewed the information at issue, we conclude question numbers one through four 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. Thus, the department may withhold this information under section 552.122(b). However, we find question number five consists of a general question evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test any specific knowledge of an applicant. Accordingly, question number five, as well as its recommended response and the actual responses, may not be withheld under section 552.122 of the Government Code.

You raise section 552.137 of the Government Code for a portion of the remaining information. Section 552.137 of the Government Code exempts 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). Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the marked e-mail address under section 552.137 of the Government Code, unless the department receives consent for its release.

In summary, the department must withhold the information we have marked pursuant to section 552.117(a)(3) of the Government Code and Open Records Letter No. 2005-01067, to the extent it applies to a current or former employee of the department. The department must also 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 question numbers one through four, as well as the corresponding actual and recommended answers, under section 552.122 of the Government Code. The department must withhold the marked e-mail address under section 552.137 of the Government Code, unless the department receives consent for its release.¹ 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 369967

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.