



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2010

Ms. Charlotte A. Towe
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2010-04437

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# 375113.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the complete package from interviews to final non-selection for a specified job posting. You state some information has been or will be made available to the requestor. You claim the submitted 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 that the submitted employment applications and interview answers include the personal information of applicants who may be current or former employees of the department. The applications also include 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)). We note that a post office box number is not a "home address" for purposes of section 552.117.¹ Therefore, to the extent the applicants are current or former employees of

¹See Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

the department, the department must withhold the personal information we have marked in accordance with Open Records Letter No. 2005-01067.² 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 state the submitted questions are structured to review selected areas of expertise that a person occupying the position will encounter. Having reviewed the submitted information, we find that questions 2, 3, and 4 evaluate the applicant’s specific knowledge or ability in a particular area, thus qualifying as “test items” under section 552.122(b) of the Government Code. We also find that release of the recommended 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 questions 1, 5, and 6 are general questions 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 applicant. Accordingly, questions 1, 5, and 6 and the recommended and actual answers to these questions are not excepted from disclosure under section 552.122 of the Government Code.

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 addresses we have marked are not specifically excluded by section 552.137(c).

²To the extent the applicants whose information we have marked are not current or former employees of the department, 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.

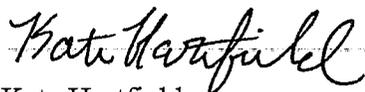
Therefore, unless the department has received consent for their disclosure, it must withhold the e-mail addresses we have marked under section 552.137.³

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 current or former employees of the department. The department must also withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code and Open Records Letter No. 2005-01067. The department may withhold questions 2, 3, and 4, as well as the recommended and actual answers to these questions, under section 552.122 of the Government Code. The department must withhold the e-mail addresses we have marked under section 552.137, unless the department receives consent for their release. The remaining information must be released.⁴

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

³We 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.

⁴We note the information to be released contains certain information pertaining to the requestor that would be withheld from the general public by laws and exceptions enacted to protect the requestor's privacy. The requestor has a special right of access to his private information. *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). If the department receives another request for this particular information from a different requestor, the department should again seek a decision from this office.

Ref: ID# 375113

Enc. Submitted documents

c: Requestor
(w/o enclosures)