



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2010

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2010-12504

Dear Ms. Alexander:

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# 391497.

The Texas Department of Transportation (the "department") received a request for all information relating to Job Requisitions N487 Transportation Funding Spec V 014157, K414 Regional Facilities Coordinator 014222, and K414 Regional Facilities Coordinator 014223. You inform us that you will redact personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You state you are releasing some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹This office recently issued Open Records Decision No. 684, 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.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You have marked portions of the submitted information under section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You inform us the former or current employees at issue timely elected confidentiality under section 552.024 for the marked information. Therefore, we find you must withhold the information you have marked under section 552.117(a)(1) of the Government Code.

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 seek to withhold Exhibit B, which consists of interview questions, as well as the preferred answers to those questions, under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that interview question numbers four, seven, nine, and ten qualify as test items for the purposes of section 552.122(b). We also conclude that the release of the preferred answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that the department may withhold interview question numbers four, seven, nine, and ten, along with the preferred answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions in Exhibit B 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 interview questions are not test items under section 552.122(b) and therefore may not be withheld on this basis.

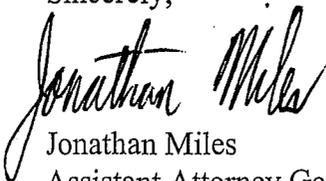
You have marked portions of the remaining information under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information that relates to a Texas motor vehicle operator's or driver's license or permit. Gov't Code § 552.130(a)(1). However, we note you seek to withhold the driver's license issuing state under section 552.130. That information, which we have marked, does not constitute motor vehicle record information for purposes of section 552.130 and may not be withheld on that basis. Upon review, we find the remaining Texas motor vehicle record information you have marked must be withheld under section 552.130 of the Government Code.³

In summary, the department must withhold the information you have marked under section 552.117(a)(1) of the Government Code. The department may withhold interview question numbers four, seven, nine, and ten, along with the preferred answers to those questions, under section 552.122 of the Government Code. Except where we have marked for release, the department must withhold the motor vehicle record information you have marked under section 552.130 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, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eb

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 Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 391497

Enc. Submitted documents

c: Requestor
(w/o enclosures)