



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 15, 2010

Ms. Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
4000 Jackson Avenue
Austin, Texas 78731

OR2010-14022

Dear Ms. Soldano:

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# 393671.

The Texas Department of Motor Vehicles (the "department") received a request for the following information for the top three applicants interviewed for job requisition number 014424: (1) job applications and competencies, (2) job simulations and results, and (3) interviewers' notes and ratings results. You claim that a portion of the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, you state the position at issue has not been filled yet and more individuals could be interviewed; therefore, the department does not yet know who are the top three interviewees. However, you also inform this office, and submit documentation showing, you sought and received clarification from the requestor. *See Gov't Code § 552.222(b)* (governmental body may communicate with requestor for purpose of clarifying or narrowing request for

¹We 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.

information); *see also* Open Records Decision No. 561 at 8 (1990) (governmental body must make a good faith effort to relate a request for information held by the governmental body).

As you have submitted information pertaining to the current three top interviewees for our review and raised exceptions to disclosure for this information, we consider the department to have made a good faith effort to identify the information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted information.

Section 552.122 of the Government Code excepts from 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. *Id.* 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 job simulation questions, as well as the preferred and actual answers to those questions, in Exhibit B under section 552.122. Having reviewed the questions at issue, we agree that they evaluate an individual's knowledge or ability in a particular area. Furthermore, we find that release of the preferred and actual answers to these questions might reveal the questions themselves. Therefore, the department may withhold the submitted job simulation questions, as well as the corresponding preferred and actual answers, in Exhibit B under section 552.122 of the Government Code.

We note portions of the information in Exhibit C are subject to sections 552.130 and 552.137 of the Government Code.² Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license issued by a Texas agency. Gov't Code § 552.130(a)(1). The department must withhold the Texas driver's license information we have marked under section 552.130.

Section 552.137 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). *Id.* § 552.137(a)-(c). The department must withhold

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

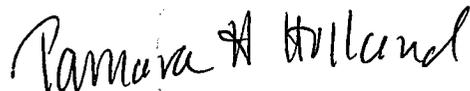
the personal e-mail address we have marked under section 552.137, unless the owner of the address affirmatively consents to its release. *See id.* § 552.137(b).

In summary, the department may withhold Exhibit B under section 552.122 of the Government Code. The department must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code and the personal e-mail address we have marked under section 552.137, unless the owner of the address affirmatively consents to its release.³ The remaining information in Exhibit C 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 393671

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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 a Texas driver's license number under section 552.130 of the Government Code and 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.