



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2011

Ms. Mia Settle
General Counsel
Harris County Community Supervision and Corrections Department
49 San Jacinto
Houston, Texas 77002

OR2011-14439

Dear Ms. Settle:

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# 431996.

The Harris County Community Supervision and Corrections Department (the "department") received a request for nine categories of information pertaining to applicant and interview information for Community Supervision Officer positions on a specified date. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, 552.122, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Although you raise section 552.024 of the Government Code as an exception to disclosure, we note that this section is not an exception to public disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024. We note section 552.117 of the Government Code is the proper exception to assert.

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 seek to withhold the information you have redacted in the transcripts in Exhibits 4 and 5 under the federal Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code, which governs the availability of student records held by educational institutions or agencies receiving federal funds. These provisions apply only to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). Although the submitted information includes transcripts, the transcripts are maintained by the department, whose office is not an educational institution. You do not inform us the department received the transcripts at issue from the educational institutions that created them. We therefore find the department may not withhold the submitted transcripts on the basis of FERPA. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the department’s exceptions to disclosure. Nevertheless, we caution the department that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov’t Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous), .302.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the department may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We have marked the personal information of a department employee in Exhibit 3. You state, and have submitted documentation demonstrating, that the employee whose information is at issue timely elected to keep his personal information confidential pursuant to section 552.024 of the Government Code prior to the date the department received the request. Thus, the department must withhold the information we have marked in Exhibit 3 under section 552.117(a)(1) of the Government Code.³

Section 552.1175 of the Government Code provides in part:

(a) This section applies only to:

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, emergency contact information, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(1); Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). To the extent the information we have marked in Exhibit 2 relates to peace officers as defined by article 2.12 of the Code of Criminal Procedure and the peace officers elect to restrict access to the information pertaining to them in accordance with section 552.1175(b), the department must withhold the marked information in Exhibit 2 under section 552.1175 of the Government Code.⁴

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 portions of Exhibits 2 and 3 under section 552.122 of the Government Code. You state the information at issue evaluates technical expertise and coping mechanisms and that release of this information could compromise future interviews and the

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure for this information.

department's selection process. Having considered your arguments and reviewed the information at issue, we conclude the information we have marked qualifies as test items for the purposes of section 552.122(b). Accordingly, we conclude the department may withhold the marked information under section 552.122 of the Government Code. We find, however, the remaining information at issue evaluates an applicant's individual abilities, general workplace skills, and subjective ability to respond in a particular situation, and does not test any specific knowledge of an applicant. Accordingly, we determine the remaining items at issue are not test items under section 552.122(b) of the Government Code and therefore may not be withheld on this basis.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). The department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

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). The e-mail addresses at issue are not specifically excluded by section 552.137(c). As such, the department must withhold these e-mail addresses, which we have marked, under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release.⁵ *See id.* § 552.137(b).

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, the department may withhold the social security numbers in Exhibits 4 and 5 pursuant to section 552.147 of the Government Code.⁶

In summary, the department must withhold the information we have marked in Exhibit 3 under section 552.117(a)(1) of the Government Code. To the extent the information we have marked in Exhibit 2 relates to peace officers as defined by article 2.12 of the Code of Criminal Procedure and the peace officers elect to restrict access to the information pertaining to them in accordance with section 552.1175(b), the department must withhold

⁵Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

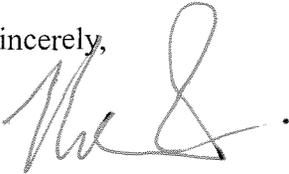
⁶Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this officer under the Act. Gov't Code § 552.147(b)

the marked information in Exhibit 2 under section 552.1175 of the Government Code. The department may withhold the information we have marked in Exhibits 2 and 3 under section 552.122 of the Government Code. The department must withhold the driver's license information we have marked under section 552.130 of the Government Code and the e-mail addresses we have marked under section 552.137 of the Government Code. The department may withhold the social security numbers in Exhibits 4 and 5 pursuant to section 552.147 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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a small dot at the end of the signature.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 431996

Enc. Submitted documents

cc: Requestor
(w/o enclosures)