



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2011

Ms. Ruth H. Soucy  
Deputy General Counsel for Open Records  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2011-18526

Dear Ms. Soucy:

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# 440459 (Comptroller ID# 7632536010).

The Texas Comptroller of Public Accounts (the "comptroller") received a request for four categories of information related to the Unix Administrator 2W10.11 job posting. You state the comptroller has released some responsive information. You also state the comptroller will redact social security numbers from the submitted information under section 552.147 of the Government Code and information subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is exempted from disclosure pursuant to sections 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, social security number, emergency contact information, and family

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<sup>1</sup>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. *See* Gov't Code § 552.147(b). Open Records Decision No. 684 is 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.

member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Section 552.117 encompasses a cellular telephone number, provided the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). 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 the 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 the information. You state the personal information you have marked under section 552.117 belongs to employees who have elected to keep such information confidential under section 552.024. Based on your representations and our review, we find the comptroller must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code; however, the comptroller may only withhold the cellular telephone number you have marked under section 552.117 if the employee paid for the cellular telephone service with his own funds.

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 the submitted test questions and answers under section 552.122 of the Government Code. You state these questions evaluate an individual's specialized technical knowledge for the position. In addition, you state these test questions will be re-used in the future. Having considered your arguments and reviewed the information at issue, we conclude the submitted test questions qualify as test items for the purposes of section 552.122(b). Accordingly, we conclude the comptroller may withhold the submitted test questions and answers under section 552.122 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license or driver's license issued by an agency of this state, another state, or country is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the comptroller must withhold the information you have marked under section 552.130 of the Government Code.

In summary, the comptroller must withhold the marked information under section 552.117(a)(1) of the Government Code; however, the comptroller may only withhold the cellular telephone number you have marked under section 552.117 if the employee paid for the cellular telephone service with his own funds. The comptroller may withhold the submitted test questions and answers under section 552.122 of the Government Code and must withhold the information you have marked under section 552.130 of the Government Code. The comptroller must release the remaining information.

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 440459

Enc. Submitted documents

c: Requestor  
(w/o enclosures)