



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2012

Mr. Lance Kinney
Executive Director
Texas Board of Professional Engineers
1917 South Interstate 35
Austin, Texas 78741-3702

OR2012-02953

Dear Mr. Kinney:

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# 446550.

The Texas Board of Professional Engineers (the "board") received a request for the requestor's entire file of record.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. You contend that portions of the submitted information are confidential under the section 1001.212 of the Occupations Code, which provides as follows:

- (a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the board relating to an applicant for a license under this chapter is privileged and confidential.
- (b) Information described in Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or

¹We note the board sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

licensing process. The information is not subject to discovery, subpoena, or other disclosure.

Occ. Code § 1001.212. You contend that the portions of information you have marked in pages 1 through 10 of Exhibit B and all of the reference documents submitted as pages 11 through 69 of Exhibit B consist of information compiled by the board relating to an applicant for licensure. Based on your representations and our review, we agree that the information at issue is confidential under section 1001.212 of the Occupations Code. Accordingly, we conclude that the board must withhold this information pursuant to section 552.101 of the Government Code as information made confidential by law.

You raise section 552.122 of the Government Code for Exhibit C. Section 552.122(b) exempts from disclosure test items developed by a licensing agency or governmental body. *See Gov't Code § 552.122(b)*. In Open Records Decision No. 626 (1994), this office determined 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. ORD 626 at 6.

You contend Exhibit C contains test items. Exhibit C consists of test instructions and answer sheets. Having considered your arguments and reviewed the information at issue, we find you have failed to explain how Exhibit C constitutes test items that evaluate an individual’s or group’s knowledge or ability in a particular area. Thus, the board may not withhold any of the information in Exhibit C under section 552.122(b).

In summary, the board must withhold the information you have marked in pages 1 through 10 of Exhibit B and all of the reference documents submitted as pages 11 through 69 of Exhibit B under section 552.101 of the Government Code in conjunction with section 1001.212 of the Occupations Code. The board must release the remaining information to the requestor.²

²We note the information being released contains the requestor’s e-mail address, to which the requestor has a right of access pursuant to section 552.137(b) of the Government Code. *See Gov't Code § 552.137(b)*. Open Records Decision No. 684 (2009) 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, without the necessity of requesting an attorney general decision. Accordingly, if the board receives another request from an individual other than this requestor, the board is authorized to withhold this requestor’s e-mail address under section 552.137 without the necessity of requesting an attorney general decision. We also note the information being released contains the requestor’s social security number, which the board would ordinarily be able to withhold under section 552.147 of the Government Code. *See id.* § 552.147(a). However, the requestor has a special right of access to his own social security number. *See id.* § 552.023(a). If the board receives another request for these same records from a person other than one with a right of access under section 552.023, the board is authorized to withhold the requestor’s social security number under section 552.147(b) without the necessity of requesting an attorney general decision. *See id.* § 552.147(b).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 446550

Enc. Submitted documents

c: Requestor
(w/o enclosures)