



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 12, 2012

Ms. Janet Monteros  
Assistant County Attorney  
El Paso County Attorney's Office  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2012-03710

Dear Ms. Monteros:

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# 447476 (CA-OP-11-491).

The El Paso County Tax Assessor-Collector's Office (the "county") received a request for information pertaining to applications for the Investigator-County Tax Office position that closed recently. You state you are releasing some information to the requestor. We understand you will redact a social security number under section 552.147(b) of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 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." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found that information pertaining to the qualifications of an applicant for public employment is generally of legitimate public interest. *See Open Records Decision Nos. 470 at 4 (1987)*

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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. Gov't Code § 552.147(b).

(public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow), 329 at 2 (1982) (reasons for employee's resignation ordinarily not private). Although references to the previous salaries of an applicant for public employment may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to the applicant's employment qualifications and background. *See* Open Records Decision No. 455 at 9 (1987) (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question"). Upon review, we find the information you have marked is not highly intimate or embarrassing, or it is a matter of legitimate public interest. Therefore, none of the information you have marked is subject to common-law privacy, and it may not be withheld under section 552.101 on that basis.

You next raise section 552.117(a)(2) of the Government Code, which excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer complies with section 552.024 or section 552.1175. Gov't Code § 552.117(a)(2). However, section 552.117(a)(2) generally does not apply to applicants for employment. *See* Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). Although the submitted information reflects the applicant whose information is at issue is currently a licensed peace officer, you do not inform us, and the submitted information does not otherwise indicate, the applicant whose information is at issue is an employee of the county. Thus, we must rule conditionally. If the applicant whose information is at issue is employed by the county, the county must withhold the information we have marked under section 552.117(a)(2). If the applicant whose information is at issue is not employed the county, the information we have marked may not be withheld under section 552.117(a)(2). We note the remaining information you have marked does not consist of the home address, home telephone number, emergency contact information, social security number, or family member information. Thus, regardless of whether the individual whose information is at issue is employed by the county, none of the remaining information you have marked may be withheld under section 552.117(a)(2).

In the event the job applicant is not employed by the county, his personal information may be excepted from disclosure pursuant to section 552.1175 of the Government Code.<sup>2</sup> Section 552.1175 provides in part:

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<sup>2</sup>The 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).

(a) This section applies only to:

(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), (b). As noted above, the applicant whose information is at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent the individual at issue elects to restrict access to his personal information in accordance with section 552.1175(b), the county must withhold the information we have marked under section 552.1175. If this individual does not elect to restrict access to the marked information, this information may not be withheld under section 552.1175.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" *Id.* § 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. 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 some of the submitted interview questions, as well as the answers to those questions, under section 552.122 of the Government Code. Having considered your arguments and reviewed the information at issue, we conclude the submitted interview questions at issue 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 the county may not withhold the questions and answers you have marked under section 552.122.

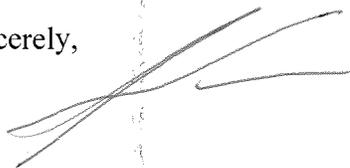
We the remaining information contains an e-mail address subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address we have marked is not specifically excluded by subsection (c). The county must withhold the e-mail address we have marked under section 552.137, unless its owner affirmatively consents to its public disclosure.

In summary, if the applicant whose information is at issue is employed by the county, the county must withhold the information we have marked under section 552.117(a)(2) of the Government Code. If the applicant whose information is at issue is not employed by the county, to the extent he elects to restrict access to his personal information in accordance with section 552.1175(b) of the Government Code, the county must withhold the information we have marked under section 552.1175 of the Government Code. The county must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the e-mail address affirmatively consents to its release. 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/akg

Ref: ID# 447476

Enc. Submitted documents

c: Requestor  
(w/o enclosures)