



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2012

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2012-11311

Dear Ms. Smith:

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# 459649 (OR Nos. 20120502-6889, 20120502-6890, and 20120502-6891).

The Texas Health and Human Services Commission (the "commission") received three requests from different requestors for information pertaining to job posting 196057, including the requestors' information. You state the commission has released most of the requested information to the requestors. You claim portions of the submitted information are excepted from disclosure under section 552.122 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). The commission has redacted its employees personal information

¹Although you also raise section 552.101 of the Government Code in conjunction with section 552.122 of the Government Code, we note section 552.101 does not encompass other exceptions found in the Act.

and driver's license numbers. Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, and social security number excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See id.* §§ 552.024(a)-(c), .117(a)(1). Section 552.130(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the information described in section 552.130(a)(1), including driver's license numbers. *See id.* § 552.130(c). We note sections 552.117 and 552.130 of the Government Code protect personal privacy. Each requestor has a right of access to his or her own personal information and driver's license numbers under section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Thus, each requestor has a special right of access to his or her individual section 552.117 and 552.130 information pursuant to section 552.023 of the Government Code, and it must be released to them in this instance.

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 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); Open Records Decision No. 626 at 8.

You seek to withhold the questions and answers provided to those questions in Exhibit C under section 552.122 of the Government Code. You state the questions are designed to evaluate an individual's knowledge or ability in a particular area. You inform us the questions are used on a continuing basis during the commission's hiring process. You state the release of this information would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we find interview question numbers 5 and 10 in Exhibit C are "test items" under section 552.122(b). We also find the answers to these questions would tend to reveal the questions. Therefore, the

commission may withhold question numbers 5 and 10, as well as the answers to these questions, under section 552.122(b). We find, however, the remaining interview question in Exhibit C, question number 2, is a general question evaluating an applicant's general workplace skills and overall suitability for employment, and does not test any specific knowledge of an applicant. Accordingly, we determine question number 2 is not a test item under section 552.122(b). Therefore, question number 2, as well as the answers provided to question number 2, may not be withheld under section 552.122(b).

We note some of the information in Exhibit B is subject to section 552.130 of the Government Code.² Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). As noted above, section 552.130 protects personal privacy. Accordingly, each requestor has a right of access to his or her own driver's license information under section 552.023 of the Government Code. *See id.* § 552.023; ORD 481 at 4. Thus, the commission must release to each requestor, the information we have marked belonging to him or her. However, the commission must withhold the information we have marked that does not belong to the requestors under section 552.130 of the Government Code.

In summary, the commission may withhold questions 5 and 10 and their answers in Exhibit C under section 552.122(b) of the Government Code. The commission must withhold the information we have marked in Exhibit B under section 552.130 of the Government Code but must release each requestor's information to him or her pursuant to section 552.023 of the Government Code. The remaining information must be released.

You ask this office to issue a previous determination that would permit the commission to withhold questions that the commission determines constitute "test items" and their answers under section 552.122(b) of the Government Code, without the necessity of requesting a decision from this office. We decline to issue such a previous determination at this time. Accordingly, 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

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

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/som

Ref: ID# 459649

Enc. Submitted documents

c: Requestor
(w/o enclosures)