



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2012

Ms. Skylar Streetman
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2012-16161

Dear Ms. Streetman:

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# 470589.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified job posting. You state the department has made or will make some of the requested information available to the requestor but claim some of the submitted information is excepted from disclosure under sections 552.102 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we agree the department must withhold the information you have marked under section 552.102(a) of the Government Code.

You assert that the submitted test items and their recommended answers and responses are excepted under section 552.122 of the Government Code. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. 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. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Having reviewed the submitted interview questions, we find the submitted questions are "test items" for purposes of section 552.122(b). Therefore, the department may withhold these questions, and their recommended answers and responses, under section 552.122(b).

Some of the remaining information is excepted from disclosure under section 552.117 of the Government Code.¹ Section 552.117(a)(3) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a current or former employee of the department, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code. Gov't Code § 552.117(a)(3). The department must withhold the information we have marked under section 552.117(a)(3) of the Government Code.

Some of the remaining information is also excepted from disclosure under section 552.130 of the Government Code. Section 552.130(a) provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Id. § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130.

The remaining information contains the e-mail address of a member of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

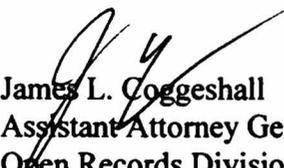
member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c), and you do not inform us a member of the public has affirmatively consented to its release. Therefore, the department must withhold the e-mail address we have marked under section 552.137.²

To conclude, the department must withhold the information you have marked under section 552.102(a) of the Government Code and the information we have marked under sections 552.117(a)(3), 552.130, and 552.137 of the Government Code. The department may withhold the submitted interview questions, and their recommended answers and responses, under section 552.122(b) of the Government Code. The department 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, 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

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²This office issued Open Records Decision No. 684 (2009), 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 opinion.

Ref: ID# 470589

Enc. Submitted documents

c: Requestor
(w/o enclosures)