



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 28, 2012

Ms. Loris Jones
Public Information Officer
Texas Board of Veterinary Medical Examiners
333 Guadalupe, Suite 3-810
Austin, Texas 78701

OR2012-19053

Dear Ms. Jones:

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# 472225.

The Texas Board of Veterinary Medical Examiners (the "board") received a request for six categories of information related to a specified position, including a specified personnel file. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code* § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you have redacted some information under section 552.117(a)(1) of the Government Code, as permitted by section 552.024(c) of the Government Code.¹ You have also redacted personal e-mail addresses in accordance with section 552.137 of the Government Code and

¹Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *Gov't Code* § 552.117(a). Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See id.* § 552.024(c)(2).

Open Records Decision No. 684 (2009).² Additionally, we note the board has redacted dates of birth from the submitted information. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. However, in the future, the board must not redact information from the documents it submits to this office in seeking an open records ruling, unless the board is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. *See Gov't Code* § 552.301(e)(1)(D). Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

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.” *Id.* § 552.102(a). The Texas Supreme Court 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 date of birth information you have marked must be withheld pursuant to section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee of a governmental body who timely requests this information be kept confidential under section 552.024. *See Gov't Code* § 552.117(a)(1). 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. You have submitted an election form showing the employee whose information is at issue timely elected to keep her personal information confidential. We agree most of the information you have marked, in addition to the information we have marked, is subject to section 552.117(a)(1) of the Government Code. However, we note some of the information you have marked, which we have marked for release, does not constitute the personal

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain 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.

information of the employee whose information is at issue. Therefore, except as we have marked for release, the board must withhold the information you have marked, in addition to the information we have marked, under section 552.117(a)(1) of the Government Code.

Section 552.122 of the Government Code excepts from public 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. Open Record Decision No. 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.* Upon review, we find the information at issue evaluates the applicants' individual experience and abilities, professional opinions, and subjective abilities to respond to particular situations and does not test any specific knowledge of an applicant. Thus, you have failed to demonstrate the applicability of section 552.122 of the Government Code to any of the information at issue, and the board may not withhold it on that basis.

Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country.³ *See* Gov't Code § 552.130(a)(1). We find the board must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the board must withhold the date of birth information you have marked under section 552.102(a) of the Government Code. Except as we have marked for release, the board must withhold the information you have marked, in addition to the information we have marked, under section 552.117(a)(1) of the Government Code. The board must withhold the driver's license information we have marked under section 552.130 of the Government Code. 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, 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

³The 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,

A handwritten signature in black ink, appearing to read 'Vanessa Burgess', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 472225

Enc. Submitted documents

c: Requestor
(w/o enclosures)