



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 21, 2013

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

OR2013-02941

Dear Ms. Benya:

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# 480455.

The Texas Department of Criminal Justice (the "department") received a request for applications and interview documentation for a specified position. You state some of the requested information has been or will be released 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.

Initially, we note the submitted information includes the personal information of applicants who may be current or former employees of the department. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3) of the Government Code, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act.<sup>1</sup> See Open Records Decision No. 673 at 7-8 (2001)

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<sup>1</sup>The 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

(listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, to the extent the applicants are current or former employees of the department, the department must withhold the information we have marked under section 552.117(a)(3) in accordance with Open Records Letter No. 2005-01067.<sup>2</sup>

Section 552.102(a) 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 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). We have marked dates of birth of applicants that may be subject to section 552.102(a) of the Government Code. Therefore, to the extent the applicants are current or former employees of the department, the department must withhold the information we have marked under section 552.102(a). However, the department may not withhold this information under section 552.102(a) if the applicants concerned are not current or former employees of the department. The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

You assert the submitted test items and their 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 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. Having reviewed the submitted interview questions, we conclude questions one and five are “test items” for purposes of section 552.122(b). Therefore, you may withhold these questions, and their recommended answers and responses, under section 552.122(b). However, we find the remaining questions are not test items for purposes of section 552.122(b). Therefore, the department may not withhold the remaining questions or their recommended answers and responses under section 552.122.

Some of the remaining information is 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:

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improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

<sup>2</sup>To the extent the marked social security numbers are not excepted from disclosure under section 552.117(a)(3), we note 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.

- (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.

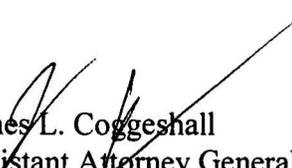
Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130.

To conclude, the department must withhold the information we have marked under section 552.117(a)(3) of the Government Code in accordance with Open Records Letter No. 2005-01067 and under section 552.102(a) to the extent the applicants concerned are current or former employees of the department. The department must also withhold the information we have marked under section 552.130 of the Government Code. The department may withhold questions one and five, 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](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

JLC/tch

Ref: ID# 480455

Enc. Submitted documents

c: Requestor  
(w/o enclosures)