



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 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

OR2013-05149

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# 482650.

The Texas Department of Criminal Justice (the "department") received a request for the interview documents related to a specified position. You state the department will release some information to the department. You 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 has 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the department must withhold the date of birth you have marked under section 552.102(a) of the Government Code.

Section 552.122 of the Government Code excepts from required 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 Records Decision No. 626 at 6 (1994). 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 the submitted interview questions and answers under section 552.122 of the Government Code. You state the submitted interview questions test the technical expertise of applicants. Further, you state the same or similar questions will be used in the future and argue release of the information at issue could compromise future interviews. Having considered your arguments and reviewed the submitted information, we find the interview questions we have marked qualify as test items under section 552.122(b) of the Government Code. We also find the release of the model answers and the applicant's responses to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the questions and the corresponding model answers and applicant's responses that we have marked under section 552.122(b) of the Government Code. We find, however, the remaining information only evaluates an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and does not test any specific knowledge of an applicant. Accordingly, we determine the remaining information does not consist of test items under section 552.122(b) and may not be withheld on that basis.

The remaining information contains information subject to sections 552.117 and 552.130 of the Government Code.¹ Section 552.117(a)(3) of the Government Code exempts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. Gov't Code § 552.117(a)(3). Thus, the department must withhold the information we have marked under section 552.117(a)(3) of the Government Code.

Section 552.130 of the Government Code exempts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or

¹The 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).

another state or country. *Id.* § 552.130(a)(1). Accordingly, the department must withhold the information we have marked under section 552.130 of the Government Code.²

In summary, the department must withhold the date of birth you have marked under section 552.102(a) of the Government Code. The department may withhold the information we have marked under section 552.122(b) of the Government Code. The department must withhold the information we have marked under section 552.117(a)(3) of the Government Code and the information we have marked under section 552.130 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 482650

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Section 552.130 allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *Id.* § 552.130(d), (e).