



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 31, 1994

Mr. Richard D. Monroe  
Deputy General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Building  
125 East 11th Street  
Austin, Texas 78701-2483

OR94-229

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 22597.

The Department of Transportation (the "department") received an open records request for information regarding the selection file for a certain position and particularly the following information for this job position: (1) applications and resumes of applicants interviewed; (2) position matrix for each applicant; (3) interview notes and forms for each applicant; (4) the racial identity of each applicant interviewed; and (5) the age of each applicant interviewed. The department has submitted a representative sample of responsive documents for our review. The department contends that the information is protected from disclosure under section 552.111 of the act.<sup>1</sup>

You have provided to this office as a representative sample documentation relating to one applicant and a blank racial identification form. Upon a review of the application, we note that it contains this applicant's name, address, telephone number, employment history, educational background, employment interests, qualifications and other similar data as well as an attached detailed resume. In Open Records Decision No. 455 (1987), this office held that the applications for government employment were public information and were not excepted under privacy concerns. There appears to be no

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<sup>1</sup> The department also claims that the applications for the position at issue are protected by section 552.305 since a third party's (the applicant's) privacy or property interests may be involved, but does not indicate specific reasons for withholding the information. By raising section 552.305, the department here is impliedly raising common-law privacy under section 552.101, which is discussed below.

indication that the applications for a government position should be withheld from disclosure.<sup>2</sup>

We do note, however, that in the case of this particular sample applicant, he is presently employed by the department in another position. Under section 552.024, a public employee can request in writing that his home address and telephone number be withheld from disclosure. If this employee did choose to withhold access to his home address and telephone, then this information must be redacted from the application before disclosing it. You do not indicate whether the other applicants are public employees or not, but you must determine whether they are public employees, and if so, whether they elected to also withhold this type of personal information from disclosure. Their home addresses and telephone numbers would be subject to disclosure if they are not public employees or if they chose to allow public access to such information. Likewise, without having all of the applications before us, we cannot determine whether any other mandatory exception requires the department to withhold portions of the other applications. For example, common-law privacy may prevent disclosure of information about prescription drugs or the mental health history of an applicant. *See, e.g.,* Open Records Decision Nos. 455 at 5; 343 (1982).

The department also claims that section 552.111 of the act protects the position matrix and interview notes from disclosure. Section 552.111 excepts from public disclosure an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." This office most recently addressed the proper scope and interpretation of this section in Open Records Decision No. 615 (1993), in light of the holding in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). In order for information to be exempted from disclosure under section 552.111, the information must be related to the policymaking functions of the governmental body. Open Records Decision No. 615 (copy enclosed). An agency's policymaking functions do not encompass routine internal administrative and personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* The requested interview notes and position matrix are related to personnel matters not covered by section 552.111. Therefore, the information must be released in its entirety.

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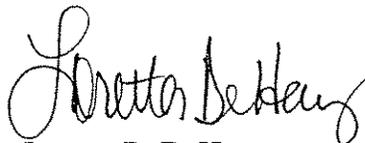
<sup>2</sup> We note, however, that federal law may prohibit disclosure of social security numbers found on the applications for employment. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990.* *See* Open Records Decision No. 622 (1994); *see also* 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the department should ensure that the information is not confidential under this federal statute.

With respect to the request for the racial identification of the applicants, the department submitted a blank racial identity form which it claims is optional for each applicant. The department also states that once the information is entered into the computer, the form is destroyed, and the information is used for statistical purposes for certain federal authorities. According to the department, "these authorities are interested only in gross applicant figures and the ethnic and sex breakdown of those gross applicant figures."

The actual identity forms requested for the position at issue no longer exist, and the information in the computer is not kept in a manner that specifically identifies the race of applicants for a particular position. The department also claims that the information on the age of the applicants does not exist. This office has previously ruled that the act does not require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed w.o.j.); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 (1986); 342 (1982); 87 (1975). In addition, a governmental body is not required to organize information in the form requested by a member of the public. Attorney General Opinions JM-672 (1987); JM-293 (1984); Open Records Decision No. 467 (1987). Moreover, a governmental body is not required to obtain information not in its possession. Open Records Decision No. 558 (1990). Since the information requested on the racial identity and the age of the applicants for the position at issue does not exist, the department need not comply with that portion of the request. The remainder of the requested information, except as noted above, must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/JCH/AMS/rho

Ref.: ID# 22597

Enclosures: Open Records Decision No. 615  
Submitted documents

cc: Mr. Ralph M. St. Amant  
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(w/o enclosures)