



October 22, 2002

Ms. Janice Mullenix
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2002-5971

Dear Ms. Mullenix :

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170996.

The Texas Department of Transportation (the "department") received a written request for five categories of information pertaining to the selection of certain applicants for interviews for the position of Director of the Office of Civil Rights. You indicate that some of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 552.101, 552.117, 552.122(b), 552.130, and 552.136 of the Government Code.

Section 552.117(1) of the Government Code requires that the department withhold an employee's home address, home telephone number, social security number, and information that reveals whether the employee has family members, but only if the employee elected to keep this information confidential in accordance with section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, in order to withhold section 552.117(1) information from the public, a proper election must be made prior to the receipt of the request for information.

In this instance, to the extent that the employees whose information is at issue elected prior to the department's receipt of the records request to keep their section 552.117 information confidential in accordance with section 552.024, the department must withhold that information pursuant to section 552.117(1) of the Government Code. We generally agree that the information you have marked in brackets must be withheld pursuant to section

552.117(1). We have, however, marked a few small portions of this information that must be released.

We note that social security numbers that are not otherwise excepted from disclosure under section 552.117 might nevertheless be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You inform us that TxDOT maintains employees' social security numbers pursuant to provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 653a(a)(2)(B), (b)(1)(A). Under this federal law, an employer is required to furnish to the Directory of New Hires of the State in which a newly hired employee works, a report that includes the employee's social security number. 42 U.S.C. § 653a(b)(1)(A). Thus, we agree that TxDOT obtained and is maintaining some of its employees' social security numbers pursuant to a law that was enacted after October 1, 1990. You must withhold from disclosure the social security numbers of TxDOT employees whose numbers were collected pursuant to this law. For employees who were hired before this law was enacted, social security numbers were not obtained or maintained pursuant to the law and therefore, those numbers may not be withheld under section 552.101 and the federal law.

Section 552.122(b) of the Government Code protects from public disclosure a "test item developed by a . . . governmental body." Section 552.122(b) is applicable only where the test item constitutes a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." This exception does not apply to evaluations of an employee's overall job performance or suitability. *See id.* at 6. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *See id.*

After reviewing the submitted materials, we agree that questions 3, 4, 5, and 6 constitute standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. Consequently, the department may withhold these four test items pursuant to section 552.122(b). The remaining interview questions do not constitute "test items" and therefore must be released to the requestor.

Section 552.130(a)(1) of the Government Code requires the department to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold the Texas driver's license numbers contained in the records at issue pursuant to section 552.130(a)(1) of the Government Code.

Finally, we address your contention that certain e-mail addresses are excepted from required public disclosure. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

- (a) An e-mail address *of a member of the public* that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

Some of the documents at issue contain private e-mail addresses. It does not appear to this office that those individuals have affirmatively authorized the department to release their e-mail addresses to the public. Accordingly, section 552.137 of the Government Code requires the department to withhold the e-mail addresses that you have marked unless the department receives an affirmative consent to release.

In summary, the department must withhold department employees' home addresses, home telephone numbers, social security numbers, and information that reveals whether each employee has family members, but only to the extent the employees elected to keep this information confidential in accordance with section 552.024 of the Government Code. For social security numbers not so excepted, you must withhold this information for employees whose social security numbers were collected pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The department may withhold interview questions 3, 4, 5, and 6 pursuant to section 552.122(b). Employees' driver's license numbers must be withheld from the public pursuant to section 552.130(a)(1). The department must also withhold pursuant to section 552.137 the e-mail addresses that you marked in brackets. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/RWP/lmt

Ref: ID# 170996

Enc: Submitted documents

c: Mr. Thomas Mann, Jr.
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(w/o enclosures)