



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2005

Ms. Amy D. Smith
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2005-09489

Dear Ms. Smith:

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# 234484.

The Board of Pardons and Paroles (the "board") received a request for information regarding a specified job posting.¹ You claim that some of the requested information is excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Section 552.122(b) of the Government Code exempts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this

¹The board sought and received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed).

²To the extent any additional types of responsive information existed on the date the board received this request, we assume the board has released them. If the board has not released any such records, it must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

office determined that 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. Open Records Decision No. 626 at 6 (1994). This office has generally found section 552.122 to apply in cases where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

You contend that the submitted interview questions and responses are excepted from disclosure under section 552.122(b) of the Government Code. You also state that the release of those test items might “undermine the selection process” and compromise the effectiveness of future examinations. However, we find that the submitted interview questions are general questions evaluating an applicant’s personal experiences and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, the submitted interview questions and responses may not be withheld under section 552.122 of the Government Code.

Next, you claim that some of the submitted information is confidential under section 552.137 of the Government Code. In relevant part, section 552.137 provides that, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). We note, however, that the submitted e-mail address belongs to the requestor. Under section 552.023 of the Government Code, the requestor has a right of access to her own e-mail address. *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on grounds that information is considered confidential by privacy principles). Accordingly, the submitted e-mail address may not be withheld under section 552.137 of the Government Code.

We note, that the submitted information contains social security numbers. Section 552.147 of the Government Code³ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the board must withhold the social security numbers we have marked in the submitted information under section

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov’t Code § 552.147).

552.147.⁴ The board may not withhold the requestor's social security number because she has a special right of access to such information. *See* Gov't Code § 552.023(b).

In summary, the board must withhold the social security numbers we have marked under section 552.147 of the Government Code. The remaining information must be released to the requestor.⁵

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

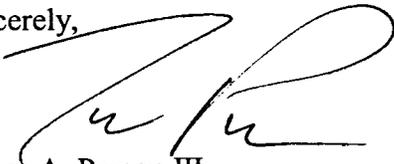
⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

⁵If the board receives a future request for this information from an individual other than the requestor or her agent, the board should again seek our decision.

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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read 'JAP', written over a horizontal line.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 234484

Enc. Submitted documents

c: Ms. Sandra Pickell
2500 Claudia Drive
Leander, Texas 78641
(w/o enclosures)