



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 19, 2005

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

OR2005-09503

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# 234485.

The Texas Department of Criminal Justice (the "department") received a request for information relating to applicants for two particular positions. You claim that the requested information is excepted from disclosure under sections 552.101, 552.122, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit information to the portion of the request regarding the promoting or appointed authority and "who signed the authorization papers" for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and

encompasses information made confidential by other statutes. Gov't Code § 552.101. You claim that the submitted records contain criminal history record information ("CHRI"), which is encompassed by section 552.101. CHRI that is generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. However, the definition of CHRI does not include driving record information maintained by DPS under chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2)(B). After reviewing the submitted records, we find that the information at issue is not CHRI and may not be withheld on that basis.

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 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. *Id.* at 6. 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); Open Records Decision No. 626 at 8 (1994).

Having reviewed the questions at issue, we agree that questions 1-4, 6, and 7 evaluate an individual's or group's knowledge or ability in a particular area. Furthermore, we find that the answers to these questions might reveal the questions themselves. Therefore pursuant to section 552.122, the department may withhold questions 1-4, 6, and 7, as well as the corresponding preferred and actual answers. We find, however, that question 5 is a general question evaluating an applicant's general workplace skills and overall suitability for employment, and does not test any specific knowledge of an applicant. Accordingly, we determine question 5 is not a test item for purposes of section 552.122. The department may not withhold question 5 or the preferred or actual answers to this question pursuant to section 552.122.

Next, we note that the submitted information includes the personal information of applicants for a position with the department. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)). We note, however, that section 552.117(a)(3) deems information confidential only in order to protect an individual's privacy. Therefore, the requestor has a special right of access pursuant to section 552.023 to his own information that would otherwise be excepted from disclosure to the public under section 552.117(a)(3). See Gov't Code §§ 552.023 (person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest). Thus, if the requestor is a current or former employee of the department, the department must release the requestor's personal information to him. The department must withhold the personal information of current or former employees of the department other than the requestor under section 552.117(a)(3) in accordance with Open Records Letter No. 2005-01067.

To the extent that the submitted social security numbers are not those of current or former department employees, they are excepted from disclosure under section 552.147 of the Government Code,¹ which provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the remaining social security numbers under section 552.147.² However, this section excepts information from disclosure in order to protect individuals' privacy. Therefore, the requestor is entitled to his own social security number, and it may not be withheld from him under section 552.147. See Gov't Code § 552.023.

The submitted information includes applicants' Texas driver's license numbers. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the license number, class, restrictions and expiration date of a driver's license issued by an agency of the State of Texas under section 552.130 of the Government Code. The department must withhold the Texas driver's license numbers under section 552.130 in accordance with Open Records Letter No. 2005-01067.

Finally, you claim that the submitted e-mail addresses are excepted from disclosure pursuant to section 552.137 of the Government Code. This section excepts from disclosure "an e-mail

¹Added 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).

²We 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.

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 specifically excluded by section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). You do not indicate that the relevant individuals have consented to the disclosure of their e-mail addresses. We therefore determine that the department must withhold the e-mail addresses pursuant to section 552.137(a).

In summary, the department may withhold questions 1-4, 6, and 7, as well as the corresponding preferred and actual answers, under section 552.122. To the extent the submitted information includes the personal information of current or former department employees other than the requestor, it must be withheld under section 552.117(a)(3) in accordance with Open Records Letter No. 2005-01067. Except for the requestor’s, the submitted social security numbers that are not subject to section 552.117(a)(3) must be withheld under section 552.147. Texas-issued motor vehicle record information must be withheld under section 552.130 in accordance with Open Records Letter No. 2005-01067. Finally, the department must withhold the submitted e-mail addresses that it has marked. The remaining information must be released to the requestor.³

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

³Because some of the information to be released is confidential with respect to the general public, if the department receives another request for information from a different requestor, the department should again seek a decision from us before releasing this information to such a requestor. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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).

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jpa

Ref: ID# 234485

Enc. Submitted documents

c: Mr. Frederick A. Gutierrez
425 East Springdale Lane
Grand Prairie, Texas 75052
(w/o enclosures)