



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 5, 2006

Mr. Rashaad V. Gambrell  
Assistant City Attorney  
City of Houston Legal Department  
P.O. Box 368  
Houston, Texas 77001-0368

OR2006-03384

Dear Mr. Gambrell:

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# 245590.

The City of Houston (the "city") received two requests for information related to a specified Librarian III job posting. You claim that portions of the requested information are excepted from disclosure under sections 552.117, 552.122, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestors. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we address the requestors' assertion that the city failed to comply with the requirements of section 552.301(d) of the Government Code. *See* Gov't Code § 552.301(d) (governmental body must provide requestor with written statement that governmental body has asked for decision from attorney general and copy of governmental body's written communication to attorney general within ten business days of receiving request). The city states, and the submitted information reflects, that it received both requests for information on January 12, 2006. The city informs us that it was closed on January 16, 2006 in observance of a holiday. Therefore, the tenth business day following the city's receipt of the requests was January 27, 2006. The city's request for a decision bears a post office mark indicating it was mailed on January 26, 2006. *See* Gov't Code § 552.308(a) (ten-day deadline met if request bears post office mark indicating time within ten-day period).

Further, the submitted information indicates the city simultaneously sent copies of the request for a decision to the requestors. Consequently, we find that the city timely notified the requestors of the request for a decision within ten business days of the receipt of the requests as mandated by section 552.301(d). Accordingly, we will address the city's claims against disclosure.

Section 552.122(b) of the Government Code exempts from 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. 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); Open Records Decision No. 626 at 8 (1994).

Having considered your arguments and reviewed the submitted information, we find that the submitted interview questions evaluate an applicant's general workplace skills and overall suitability for employment and do not test any specific knowledge of an applicant. Therefore, we conclude that the submitted questions do not qualify as test items and may not be withheld under section 552.122(b).

Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses, home telephone numbers, personal cellular telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, the city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made requests for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent that the personal information we have marked pertains to current or former city employees who made timely elections under section 552.024, the city must withhold such information under section 552.117(a)(1). The city may not withhold this information on behalf of those current or former employees who did not make such timely elections. We note that the home telephone number of one of the requestors, a current city employee, is included in the submitted information. Pursuant to section 552.023 of the Government Code, the requestor at issue has a special right of access to his own home telephone number and it may not be withheld from him pursuant to section 552.117(a)(1). *See* Gov't Code § 552.023 (person has special right of access to information

held by governmental body that relates to person and is protected from disclosure by laws intended to protect that person's privacy interests).

Even if section 552.117(a)(1) of the Government Code does not apply, the submitted social security number must be withheld under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the city must withhold the submitted social security number under section 552.147.<sup>1</sup>

Section 552.130 of the Government Code excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state" or "a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1)-(2). Therefore, the city must withhold the Texas motor vehicle information we have marked pursuant to section 552.130.

Section 552.137 of the Government Code excepts from disclosure "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 we have marked does not appear to be of a type specifically excluded by section 552.137(c). You state that the individual to whom this e-mail address belongs has not affirmatively consented to its release. Therefore, the city must withhold the marked e-mail address under section 552.137.

In summary, the marked personal information must be withheld under section 552.117(a)(1) of the Government Code if the current or former employees at issue timely elected to keep such information confidential; however, the home telephone number belonging to one of the requestors must be released to him. Even if section 552.117(a)(1) of the Government Code does not apply, the submitted social security number must be withheld under section 552.147 of the Government Code. The marked Texas motor vehicle record information must be withheld under section 552.130 of the Government Code. The marked e-mail address must be withheld under section 552.137 of the Government Code. The remaining information must be released.

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

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<sup>1</sup>We 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.

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).

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 245590

Enc. Submitted documents

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