



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2006

Ms. April M. Virnig  
Taylor Olson Adkins Sralla Elam  
City of Haltom City  
6000 Western Place, Suite 200  
Fort Worth, Texas 76107-4654

OR2006-12492

Dear Ms. Virnig:

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#262631.

The City of Haltom City (the "city"), which you represent, received a request for information pertaining to "the recent hiring of the [city] Human Resources Director." You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.122, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, the governmental body must meet both prongs of this test. *Id.* at 681-82. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989).

You argue that common-law privacy protects information relating to criminal conduct on the submitted employment applications. However, the information at issue was supplied by the applicants themselves in response to questions posed on the employment applications. Thus,

portion of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy on this basis. Furthermore, we find that, although the information at issue may be potentially embarrassing, it is of legitimate public interest and, therefore, may not be withheld under section 552.101 and common-law privacy on this basis either. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 (1984) (scope of public employee privacy is narrow), 405 (1983) (manner in which employee performed job cannot be said to be of minimal public interest), 400 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy).

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. 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. 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.

You state that the submitted documents include interview questions and answers that "represent a standard means by which the [c]ity evaluates applicants for the position of Director of Human Resources." However, while the submitted interview questions may evaluate an individual's overall suitability for the position, they do not test the individual's knowledge in a particular area and therefore are not "test questions" as contemplated by section 552.122(b). Accordingly, the city may not withhold any of the submitted information under section 552.122(b).

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[,] a motor vehicle title or registration issued by an agency of this state[, or ] a personal identification document[.]" Gov't Code § 552.130. Thus, the city must withhold the Texas motor vehicle record information you have marked, as well as the additional information we have marked, under 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 id.* § 552.137(a)-(c). The e-mail addresses you have marked are not of a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the city must withhold the marked e-mail addresses in the submitted information.

Section 552.147 of the Government Code 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 social security numbers you have marked, as well as the additional social security numbers we have marked, under section 552.147.<sup>1</sup>

We note that the submitted information contains the applicants’ home addresses, personal phone numbers, and family member information. You do not inform us if any of these applicants were hired by the city. Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and personal 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 of the Government Code. 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). A governmental body may only withhold information under section 552.117(a)(1) if the employee in question made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. Therefore, if an applicant who was hired by the city made a timely election under section 552.024, the city must withhold the type of information we have marked under section 552.117(a)(1). However, the city may not withhold this information under section 552.117 if the applicant was not hired or if a timely election was not made.

In summary, the city must withhold the information it has marked, as well as the additional information we have marked, under sections 552.130, 552.137, and 552.147 of the Government Code. The city must withhold the type of information we have marked under section 552.117(a)(1) of the Government Code if that section is applicable. The remaining 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

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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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/eb

Ref: ID# 262631

Enc. Submitted documents

c: Ms. Dindy Robinson  
1907 Green Apple Lane  
Arlington, Texas 76014  
(w/o enclosures)