



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 27, 2007

Mr. Thomas McClure  
Assistant General Counsel  
Texas Department of State Health Services  
1100 W. 49<sup>th</sup> Street  
Austin, Texas 78756

OR2007-03375

Dear Mr. McClure:

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# 274062.

The Texas Department of State Health Services (the "department") received two requests for information regarding job posting No. 29650. You state that some of the requested information will be released to the requestors. You state that you will withhold the submitted social security numbers under section 552.147 of the Government Code.<sup>1</sup> You claim, however, that the submitted information is 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.

Section 552.117(a)(1) of the Government Code provides that information is excepted from disclosure if it relates to a current or former employee's home address, home telephone number, social security number, or reveals whether the employee has family members. *See* Gov't Code § 552.117(a)(1). The department is required to withhold this information if the

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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. We also note that each requestor has a right of access to their own social security number under section 552.023, and thus, the department may not withhold this information. *See* Gov't Code § 552.023.

employee timely requested that this information be kept confidential under section 552.024 of the Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987); *see generally* Open Records Decision No. 530 (1989) (stating that whether particular piece of information is public must be determined at time request for it is made).

Here, the information at issue is located on applications, some from employees of the department at the time of the application and some from persons not employed with the department at the time of application. Section 552.117(a)(1) only applies to former and current employees and not applicants. Thus, if the information on the applications is not related to an employee, the information may not be withheld under section 552.117(a)(1) of the Government Code. In this instance, you do not demonstrate that some of the applications relate to persons who were formerly or are currently employed with the department. Accordingly, you may not withhold any of the information you have marked on these applications under section 552.117(a)(1) of the Government Code. For the applications from persons employed by the department, you do not inform us nor provide documentation showing that the employees whose records are at issue timely elected confidentiality under section 552.024. Thus, for employees who timely elected to keep their personal information confidential, you must withhold this information, which you have marked, under section 552.117(a)(1) of the Government Code. The department may not withhold this information under section 552.117(a)(1) for employees who did not make a timely election to keep the information confidential. We note that each requestor has a special right of access to her own section 552.117(a)(1) information on her respective application pursuant to section 552.023 of the Government Code; and thus, the department may not withhold the requestor's own section 552.117(a)(1) information from her. *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).

You claim that the "In Box Exercise" documents are excepted from public disclosure under section 552.122(b) of the Government Code. Section 552.122(b) 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. *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).

The department states that all of the submitted "In Box Exercise" questions and answers are excepted from disclosure under section 552.122(b). After reviewing the information, we

agree that the submitted questions test an individual's knowledge in a particular area and thus constitute "test items" as contemplated by section 552.122(b). The answers, however, do not reveal the questions themselves. Therefore, the department may only withhold the questions under section 552.122 of the Government Code.

You state the Texas-issued motor vehicle record information you have marked is excepted from public disclosure under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). We note, however, that section 552.130 protects privacy interests. Since each requestor has a right of access to their own Texas-issued motor vehicle record information, the department may not withhold this information. *See* Gov't Code § 552.023. The department must, however, withhold the remaining Texas-issued motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code.

You claim that the marked e-mail addresses are excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 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 marked e-mail addresses are not the type specifically excluded by section 552.137(c). You state that the individuals whose e-mail addresses are at issue have not consented to release of their e-mail addresses. Accordingly, the department must withhold the marked e-mail addresses in accordance with section 552.137 of the Government Code.

In summary, each requestor has a right of access to her own sections 552.117 and 552.130 information.<sup>2</sup> As to the remaining information, for employees of the department who timely

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<sup>2</sup>We note, however, that this information is confidential with respect to the general public. Thus, in the event the department receives another request for this information from someone other than these requestors or their representatives, the department must ask this office for a decision whether the information is subject to public disclosure.

elected to keep their personal information confidential, you must withhold this information, which you have marked, under section 552.117(a)(1) of the Government Code. The department may not withhold this information under section 552.117(a)(1) for employees who did not make a timely election to keep the information confidential. The department may only withhold the questions under section 552.122 of the Government Code. The department must withhold the remaining Texas-issued motor vehicle record information you have marked, as well as the information we have marked, under section 552.130 of the Government Code. The department must withhold the marked e-mail addresses in accordance with section 552.137 of the Government Code. As you do not raise any other exceptions against disclosure, 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 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).

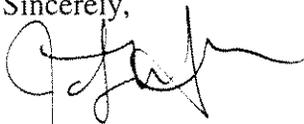
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 274062

Enc. Submitted documents

c: Ms. Carolyn Leggett  
5800 Techni Center #521  
Austin, Texas 78721  
(w/o enclosures)

Ms. Pamela Barnett  
310 MLK Jr. Drive  
Bastrop, Texas 78602  
(w/o enclosures)