



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2007

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469

OR2007-04645

Dear Mr. Bounds:

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# 276501.

The City of Corpus Christi (the "city") received a request for information related to four job requisitions. You state that the city does not have information regarding two of the job requisitions.¹ You claim that portions of the submitted 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.²

We first address your claim that the submitted documents contain information subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received or to prepare new information in response to a request for information. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

numbers, personal cellular telephone 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. We note, however, that a post office box number is not a "home address" for purposes of section 552.117.³

Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. The submitted documents include election forms for six of the employees at issue that were completed prior to the date the city received the present request. Therefore, the city must withhold the information pertaining to these individuals, which we have marked under section 552.117(a)(1). The submitted information does not indicate that the remaining information we have marked under section 552.117(a)(1) pertains to employees who have elected to withhold personal information pursuant to section 552.024. If these employees did make such an election prior to the city's receipt of the present request, then the city must withhold the remaining information we have marked under section 552.117(a)(1). The city may not withhold this information for those employees who did not make a timely election to keep the information confidential.

We next address your claim that some of the remaining information is excepted from disclosure under section 552.122 of the Government Code. Section 552.122 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

³*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

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).*

You seek to withhold the interview questions, as well as the model and actual answers to those questions, under section 552.122. Having reviewed the questions at issue, we agree that questions 1 and 11 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 of the Government Code, the city may withhold questions 1 and 11 as well as the corresponding answers. However, we conclude the remaining questions merely evaluate an individual's overall job suitability and do not evaluate that individual's knowledge or ability in a particular area. Thus, the remaining interview questions and answers do not qualify as a test items under section 552.122(b) and must be released.

You claim that some of the remaining information 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[.]

Gov't Code § 552.130(a)(1). Upon review, we agree that you must withhold the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code.

You claim that some of the remaining information is 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 id.* § 552.137(a)-(c). The e-mail addresses contained in the submitted information are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the city must withhold them in accordance with section 552.137 of the Government Code.

As a final point, we note that some of the submitted information pertains to the requestor. In this regard, we note that section 552.023 of the Government Code provides a person or a person's authorized representative with a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect the person's privacy interests. Accordingly, pursuant to

section 552.023 of the Government Code, the requestor has a special right of access to his own information that would otherwise be withheld pursuant to sections 552.117, 552.130, and 552.137 of the Government Code.

In summary, to the extent the information we have marked pertains to current or former city employees who timely elected confidentiality, it must be withheld under section 552.117 of the Government Code.⁴ The city may withhold questions 1 and 11, as well as the corresponding answers, from the information you have marked under section 552.122 of the Government Code. The Texas motor vehicle record information that we have marked must be withheld under section 552.130 of the Government Code. The e-mail addresses that we have marked must be withheld under section 552.137 of the Government Code. The remaining information must be released to the requestor.⁵

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).

⁴As our ruling under section 552.117(a)(1) is dispositive, we need not address your arguments under section 552.117(a)(2).

⁵Regardless of the applicability of section 552.117, 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. However, the requestor has a right of access to his own social security number. *See generally*, Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eeg

Ref: ID# 276501

Enc. Submitted documents

c: Mr. Henry L. Poindexter
5403 Everhart Road, #1104
Corpus Christi, Texas 78411
(w/o enclosures)