



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2007

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

OR2007-15665

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# 295817.

The City of Corpus Christi (the "city") received a request for all information pertaining to the hiring process conducted for the position of Brush Collections Superintendent. You state that a portion of the requested information will be provided to the requestor. You claim that some of the submitted information is excepted from disclosure under sections 552.117, 552.1175, 552.122, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.117 (a)(1) of the Government Code excepts from disclosure the home addresses and 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

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<sup>1</sup>We 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.

be kept confidential under section 552.024. 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). The city may only withhold information under section 552.117 on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, for an employee who timely elected to keep their personal information confidential, the city must withhold the information you have marked, as well as the information we have marked, pursuant to section 552.117(a)(1) of the Government Code. The city may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information at issue confidential.

The city also asserts that some of the information it marked is protected pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in part:

(a) This section applies only to:

...

(3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a)(3), (b). Thus, to the extent the marked information relates to a current or former employee of the Texas Department of Criminal Justice who elects to restrict access to the information in accordance with section 552.1175(b), it must be withheld from disclosure pursuant to section 552.1175 of the Government Code.

We next address your claim that some of the remaining submitted 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 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 all of the submitted interview questions under section 552.122. Having reviewed the questions at issue, we agree that question 9 evaluates an individual’s or group’s knowledge or ability in a particular area. Therefore, pursuant to section 552.122 of the Government Code, the city may withhold question 9. However, we conclude that 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 do not qualify as test items under section 552.122(b) and must be released.

You also claim that some of the remaining submitted information is excepted from disclosure pursuant to section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1), (2). Accordingly, the city must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

You assert that some of the remaining submitted information is excepted from disclosure pursuant to 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). Gov’t Code § 552.137(a)-(c). The e-mail address contained in the submitted information is not the type specifically excluded by section 552.137(c). Further, you state that the individual to whom the e-mail address pertains has not affirmatively consented to its release. Therefore, the city must withhold the marked e-mail address under section 552.137 of the Government Code.

Finally, you claim that portions of the remaining submitted information are excepted from disclosure under section 552.147 of the Government Code. Section 552.147 provides “[t]he social security number of a living person is excepted from” required public disclosure under

the Act.<sup>2</sup> Gov't Code § 552.147. Therefore, regardless of the applicability of sections 552.117 and 552.1175, the social security numbers you have marked may be withheld under section 552.147 of the Government Code.

In summary, the city must withhold the marked information under section 552.117(a)(1) if the employee at issue timely elected confidentiality. The city must withhold the marked information pursuant to section 552.1175 if the individual at issue elected to restrict access to the information in accordance with section 552.1175(b). The city may withhold interview question 9 under section 552.122. The city must withhold the Texas motor vehicle record information you have marked under section 552.130 and the marked e-mail address under section 552.137. The city may withhold the marked social security numbers under section 552.147. The remaining submitted 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).

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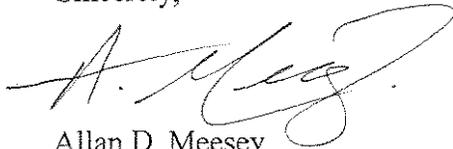
<sup>2</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/eeg

Ref: ID# 295817

Enc. Submitted documents

c: Ms. Hellen Labor  
5902 Ayers Street, #195  
Corpus Christi, Texas 78415  
(w/o enclosures)