



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2008

Ms. Charlotte A. Towe
Assistant General Counsel
Texas Department of Criminal Justice
Office of General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2008-05305

Dear Ms. Towe:

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# 307737.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the questions used by the department for a specified job posting and the answers provided by the requestor and another named individual. Additionally, the requestor seeks his and the other named individual's applications.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted.

Initially, we must address the department's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body seeking to withhold requested information must submit to this office a copy of the written request for information within fifteen business days of its receipt. Gov't Code § 552.301(e)(1)(B). The department states it received the request for information on February 5, 2008. However, as of the date of this letter, the department has not submitted a copy of the written request for information.

¹We note that this statement is based on the department's representations, as the department has not submitted the written request for information.

The department provided our office with a description of the request for information, but did not submit the actual written request submitted to the department by the requestor. We therefore find that the department failed to comply with the requirements of section 552.301(e). *See id.*

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Section 552.122 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, because you have failed to comply with the requirements of section 552.301, the department has waived its claim under section 552.122. However, section 552.137 can provide a compelling reason that overcomes the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Therefore, we will address your argument under this exception. Additionally, portions of the submitted information may be subject to sections 552.117 and 552.130, which can also provide compelling reasons.² Thus, we will also address these exceptions to disclosure.

You claim the submitted information includes an e-mail address that is subject 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). *See* Gov't Code § 552.137(a)-(c). The e-mail address in the submitted information is not specifically excluded by section 552.137(c). As such, this e-mail address, which you have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).

Section 552.117(a)(3) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department or of the predecessor in function of the department or any division of the

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(3). In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold information under section 552.117(a)(3) without the necessity of requesting a decision from this office under the Act. *See id.* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Therefore, to the extent that the applicant is a current or former employee of the department, the department must withhold his personal information, which we have marked, under section 552.117(a)(3).³

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 [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. Accordingly, the department must withhold the Texas driver's license number we have marked pursuant to section 552.130 of the Government Code.

In summary, the department must withhold the e-mail address it has marked under section 552.137 of the Government Code, unless the owner affirmatively consented to its release. To the extent that the applicant is a current or former employee of the department, the department must withhold his personal information, which we have marked, under section 552.117(a)(3). The department also must withhold the Texas driver's license information we have marked under section 552.130 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 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

³In the event that the social security number is not that of a department employee, 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.

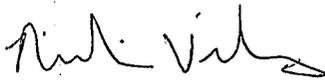
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 307737

Enc. Submitted documents

c: Mr. Ricardo R. Vela, Jr.
908 West Youst Street
Beeville, Texas 78102
(w/o enclosures)