



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 3, 2008

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

OR2008-07535

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# 311678.

The Texas Department of Criminal Justice (the "department") received a request for records from the department's Interview Board pertaining to a specified job posting. You claim that portions of the requested 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 submitted information.

Section 552.122 of the Government Code excepts from 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. Open Records Decision No. 626 at 6 (1994). 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); ORD 626 at 8.

You seek to withhold the submitted interview questions, as well as the recommended and actual answers to those questions, under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that interview question numbers one and five qualify as test items for the purposes of section 552.122(b). Accordingly, the department may withhold interview question numbers one and five, along with the recommended and actual responses to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions are general questions and statements evaluating the applicants' general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining interview questions are not test items under section 552.122(b), and the department may not withhold these questions, or the recommended or actual answers to these questions, under section 552.122 of the Government Code.

We note that section 552.130 of the Government Code is applicable to some of the information within the submitted employment applications.<sup>1</sup> Section 552.130 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). We note, however, that the requestor has a right of access under section 552.023 of the Government Code to her own Texas motor vehicle record information. *See id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Accordingly, the department must withhold the Texas motor vehicle record information of individuals other than the requestor, which we have marked, under section 552.130 of the Government Code.

You also claim that personal e-mail addresses within the submitted employment applications are excepted from 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). Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of the e-mail addresses. Therefore, the department must withhold the e-mail addresses you have highlighted under section 552.137 of the Government Code. However, because section 552.137 protects personal privacy, the department may not withhold the requestor's e-mail address under this section, and we have marked her e-mail address for release. *See id.* § 552.023(a).

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<sup>1</sup>This office will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the department may withhold interview question numbers one and five, along with the recommended and actual responses to those questions, under section 552.122. The department must withhold the Texas motor vehicle record information we have marked under section 552.130 and the e-mail addresses you have highlighted under section 552.137, with the exception of the requestor's e-mail address which we have marked for release. The remaining submitted information must be released to the requestor.<sup>2</sup>

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).

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

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<sup>2</sup>We note that some of the remaining information within the submitted employment applications may be subject to section 552.117(a)(3) of the Government Code, which exempts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of the department. Gov't Code § 552.117(a)(3). Pursuant to the previous determination issued to the department in Open Records Letter No. 2005-01067 (2005), the department may withhold information under section 552.117(a)(3) without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). Regardless of the applicability of section 552.117(a)(3), 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. Gov't Code § 552.147.

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/mcf

Ref: ID# 311678

Enc. Submitted documents

c: Ms. Deirdra Mock  
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(w/o enclosures)