



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2008

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2008-07654

Dear Ms. Soucy:

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# 311904.

The Texas Comptroller of Public Accounts (the "comptroller") received four requests for interview information relating to two separate positions. You state that some of the information will be released to the requestors. You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 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.¹

We first address your claim that the submitted documents contain information subject to section 552.117 of the Government Code. Section 552.117 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 timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information was received by the governmental body. Whether a particular piece of information is public

¹We 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.

must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). You indicate that the employee whose information is at issue elected to keep her home addresses, home telephone number, social security number, and family member information confidential prior to the date on which the comptroller received this request. Accordingly, you must withhold the information you have marked in the submitted documents under section 552.117(a)(1) of the Government Code.²

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(b) excepts from disclosure test items developed by a 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. Open Records Decision No. 626 at 6 (1994). Additionally, when answers to test questions might reveal the substance of the questions themselves, the answers may be withheld from disclosure under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). Having reviewed the submitted questions, we agree questions 4, 5, and 16 for job posting number 2B02.08, and questions 7, 17, 18, and 19 for job posting number 2S02.08 are test items excepted from public disclosure by section 552.122(b). Therefore, you may withhold these questions and the corresponding preferred and actual answers under section 552.122(b). However, the remaining questions do not test an individual's knowledge or ability in a specific area. Therefore, the comptroller may not withhold the remaining questions under section 552.122.

You contend that some of the remaining information must be withheld under section 552.130 of the Government Code. Section 552.130 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, we agree that the comptroller must withhold the Texas driver's license number it has marked under section 552.130.

You also claim that the remaining 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 remaining information is not specifically excluded by section 552.137(c). You indicate that the address owner has not consented to

²As our ruling is dispositive, we need not address your argument under section 552.147 of the Government Code for this information.

the release of this e-mail address. *See id.* § 552.137(b). As such, the e-mail address that you have marked must be withheld under section 552.137.

In summary, the comptroller must withhold the information that it has marked under section 552.117 of the Government Code. The comptroller may withhold questions 4, 5, and 16 for job posting number 2B02.08, and questions 7, 17, 18, and 19 for job posting number 2S02.08, as well as the corresponding preferred and actual answers under section 552.122 of the Government Code. The Texas drivers license number that you have marked must be withheld under section 552.130 of the Government Code. The e-mail address that you have marked must be withheld under section 552.137 of the Government Code. The remaining information must be released to the requestors.

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 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,



Bill Longley
Assistant Attorney General
Open Records Division

BL/eeg

Réf: ID# 311904

Enc. Submitted documents

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