



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street, 6th Floor
Austin, Texas 78701

OR2009-05321

Dear Ms. Alexander:

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# 340512.

The Texas Department of Transportation (the "department") received a request for information pertaining to job posting 013286. You state you are releasing some of the requested information. You state you will redact Texas motor vehicle record information pursuant to a previous determination issued by this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that some of the submitted information is excepted from disclosure under sections 552.117, 552.122, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹Section 552.147(b) of the Government Code authorizes a government 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.

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.

Section 552.122 of the Government Code exempts from 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); ORD No. 626 at 8.

You seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122. Having reviewed the questions at issue, we agree that they evaluate an individual's knowledge or ability in a particular area. Furthermore, we find that release of the preferred and actual answers to these questions might reveal the questions themselves. Therefore, the department may withhold the submitted questions, as well as the corresponding preferred and actual answers, under section 552.122 of the Government Code.

You also raise section 552.117 of the Government Code for a portion of the remaining information. Section 552.117(a)(1) exempts 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 be kept confidential under section 552.024. *See* Gov't Code § 552.117. 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). Therefore, the department may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. 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. You have marked the information that the department seeks to withhold under section 552.117(a)(1). You state that the marked information is related to employees of the department who timely requested confidentiality for the information in question. Based on your representation, we conclude that the department must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code.

You argue that the remaining information includes an e-mail address excepted from public disclosure under section 552.137 of the Government Code. Section 552.137 exempts 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). You do not inform us that the owner of the e-mail address at issue has affirmatively consented to its release. Further, the e-mail address at issue does not fall within the scope of section 552.137(c). Thus, the department must withhold the e-mail address you have marked under section 552.137 of the Government Code.

In summary, the department may withhold the submitted interview questions, as well as the corresponding preferred and actual answers, under section 552.122 of the Government Code. The department must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The department must withhold the e-mail address you have marked under section 552.137 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 340512

Enc. Submitted documents

cc: Requestor
(w/o enclosures)