



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2009

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

OR2009-10845

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# 351398.

The Texas Department of Criminal Justice (the "department") received a request for the interview documentation forms of the requestor and the applicants selected, including employer reference documentation, the interview schedule, and the applications of the selected applicants from the Program Specialist IV, Manager II, and Program Supervisor III job postings. You claim that the submitted information is 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.

Initially, we note that the department has not submitted any portion of the application of the person selected for the Manager II position and has only submitted the first page of the applications of the people selected for the other two positions. In addition, the department has not submitted employer reference documentation or interview schedules. To the extent that any such information existed at the time of the request, we presume that the department has released it. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (stating that governing body must produce public information promptly).

Next, we note that the employment applications include the personal information of the applicants selected for the Program Specialist IV and Program Supervisor III positions with the department. The applications also include Texas motor vehicle record information. In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that

authorizes the department to withhold the personal information of a current or former employee of the department under section 552.117(a)(3) of the Government Code without the necessity of again requesting an attorney general decision with regard to the applicability of this exception. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (delineating elements of second type of previous determination under section 552.301(a)). Therefore, to the extent the applicants are current or former employees of the department, the department must withhold the personal information we have marked in accordance with Open Records Letter No. 2005-01067. Open Records Letter No. 2005-01067 also authorizes the department to withhold certain Texas motor vehicle record information subject to section 552.130 of the Government Code without the necessity of requesting an attorney general decision with regard to the applicability of this exception. Thus, the department must withhold the motor vehicle record information we have marked in accordance with this previous determination.

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. ORD 626 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 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 considered your arguments and reviewed the information at issue, we conclude that interview question four of the Program Specialist IV position, question six of the Manager II position, and question three of the Program Supervisor III position qualify as test items for the purpose of section 552.122(b). We also conclude that release of the recommended and actual answers to these questions would tend to reveal the questions themselves. Accordingly, we conclude that the department may withhold the interview questions, along with the recommended and actual answers, that we have marked under section 552.122 of the Government Code. We find, however, that the remaining interview questions and the applicants' closing remarks are general questions evaluating an applicant's general workplace skills and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining questions and the applicants' closing remarks are not test items under section 552.122(b) and therefore may not be withheld on this basis.

Section 552.137 of the Government Code 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 addresses at issue are not of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the e-mail addresses you have marked in accordance with section 552.137, unless the department receives consent for their release.

In summary, the department must withhold the information we have marked pursuant to section 552.117(a)(3) of the Government Code and Open Records Letter No. 2005-01067, to the extent it applies to current or former employees of the department. The department must also withhold the Texas motor vehicle record information we have marked pursuant to section 552.130 of the Government Code and Open Records Letter No. 2005-01067. The department may withhold interview question four of the Program Specialist IV position, question six of the Manager II position, and question three of the Program Supervisor III position under section 552.122 of the Government Code. The department must withhold the e-mail addresses you have marked under section 552.137. 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](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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/rl

Ref: ID# 351398

Enc. Submitted documents

c: Requestor  
(w/o enclosures)