



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2009

Mr. James Mu  
Assistant General Counsel  
Office of the General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2009-12081

Dear Mr. Mu:

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# 353599.

The Texas Department of Criminal Justice (the "department") received a request for information on file with the department pertaining to application screening, appointment scheduling, interviewing, interview evaluating, hiring, and/or decision-making related to department job posting number 064035PP14. You state some responsive information will be made available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.122, 552.134, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert the submitted interview questions, recommended answers, and applicant answers are excepted under section 552.122(b) of the Government Code, which excepts from required 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); Open Records Decision No. 626 at 8 (1994).

The submitted interview questions evaluate applicants' individual abilities, personal opinions, and subjective ability to respond to a particular situation. They do not, however, test any specific knowledge of an applicant. Accordingly, the submitted interview questions and their corresponding model and applicant answers may not be withheld from disclosure under section 552.122 of the Government Code. As you raise no other exceptions to disclosure of this information, it must be released.

Next, you claim that the submitted "Additional Offender Information" forms are excepted from disclosure under section 552.134 of the Government Code. This section relates to inmates of the department and provides in relevant part as follows:

- (a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.134(a). Upon review, we find that portions of one Additional Offender Information form contains information about an inmate confined in a department facility. Thus, we agree that section 552.134 is applicable to this information. We also find that section 552.029 is not applicable to this information. Therefore, you must withhold the information that we have marked in this form pursuant to section 552.134. The remaining forms pertain to a former department inmate and a department parolee. This office has held that records pertaining to an inmate that were created during the inmate's incarceration are still subject to section 552.134 after the inmate is released or paroled. However, the forms reflect that, at the time the applicant provided this information to the department, the individuals whose information is at issue were not incarcerated. You do not represent that these individuals are currently inmates confined in a department facility. Accordingly, as you raise no other exceptions to disclosure of this information, the remaining Additional Offender Information forms must be released in their entirety.

You assert the submitted applications contain private e-mail addresses that are 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 a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). However, because the purpose of section 552.137 is to protect the privacy interests of individuals, the requestor's e-mail address may not be withheld from him under section 552.137. *See id.* § 552.023(b) (governmental body may not deny access to person or person's representative to whom information relates on grounds that information

is considered confidential under privacy principles). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the department must withhold the e-mail addresses we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

The applications also contain information that is excepted from disclosure pursuant to section 552.130 of the Government Code.<sup>1</sup> Section 552.130 excepts from disclosure information relating to a driver's license or permit issued by an agency of this state. See Gov't Code § 552.130(a)(1). Thus, pursuant to section 552.130, the department must withhold the Texas driver's license information we marked in the submitted documents.

In summary, the department must withhold the information related to an inmate confined in a department facility that we marked under section 552.134 of the Government Code, the e-mail addresses we marked under section 552.137, and the Texas driver's license information we marked under section 552.130. The remaining information must be released.<sup>2</sup>

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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

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<sup>1</sup>The 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).

<sup>2</sup>The information being released contains social security numbers. 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.

Ref: ID# 353599

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)