



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2009

Ms. Katie Lentz
Open Records
Williamson County Sheriff's Office
508 South Rock street
Georgetown, Texas 78626

OR2009-15145

Dear Ms. Lentz:

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# 359377.

The Williamson County Sheriff's Office (the "sheriff") received two requests from the same requestor for the requestor's employment application file, including the reason her application was denied. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.122, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requestor agreed to exclude social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers from her request. Thus, any of this information in the submitted documents is not responsive to the instant request, and it need not be released.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the

DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from the DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we agree that the information we have marked consists of CHRI and must be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.¹ The remaining information you have marked, however, is not CHRI for purposes of chapter 411 and may not be withheld on that basis under section 552.101.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *Id.* § 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. Whether information falls within the section 552.122 exception 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 state that the information you have marked consists of confidential test items. Upon review of the submitted information, we agree that the information we have marked constitutes test items that may be withheld under section 552.122 of the Government Code. We note that the remaining information you seek to withhold under section 552.122 consists of multiple choice answer sheets that do not reveal any test questions. Therefore, the remaining information you have marked may not be withheld under section 552.122.

Next, 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)-(b). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). *See* Gov't Code § 552.137(c). Therefore, unless the owners of the e-mail addresses at issue consent to

¹We note that an individual may obtain her own CHRI from the DPS. *See* Gov't Code § 411.083(b)(3).

their release, the sheriff must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

In summary, (1) the sheriff must withhold the CHRI we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code; (2) the sheriff may withhold the test items we have marked under section 552.122 of the Government Code; and (3) unless the owners of the e-mail addresses at issue consent to their release, the sheriff must withhold the e-mail addresses you have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.²

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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeeg

Ref: ID# 359377

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note that because some of the remaining information is confidential with regard to the general public, if the sheriff receives another request for this information from an individual other than this requestor, the sheriff should again seek our decision.