



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2013

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2013-03593

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# 480327.

The Texas Department of Transportation (the "department") received a request for all applications of those interviewed for job vacancy 018368, and any and all notes, letters, memorandums, emails, matrix, and correspondence in reference to this job vacancy. You claim portions of the requested information are excepted from disclosure under sections 552.102, 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.122(b) 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

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.

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 state the submitted interview questions in Exhibit B "relate to the stated knowledge, skills, and abilities required for the position and do not focus on qualifications or experience unique to a particular applicant." Further, you argue release of the information at issue could compromise future interviews. Having considered your arguments and reviewed the submitted information, we find questions 2, 5, 9, and 11 qualify as test items under section 552.122(b) of the Government Code. We also find the release of the candidates' answers to these questions would tend to reveal the questions themselves. Accordingly, the department may withhold questions 2, 5, 9, and 11, as well as the candidates' answers to these questions, under section 552.122(b) of the Government Code. However, we conclude the department has not demonstrated the remaining information in Exhibit B consists of test items subject to section 552.122(b) of the Government Code, and the department may not withhold it on that basis. As you raise no further exceptions for this information, the remaining information in Exhibit B must be released.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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 of the Government Code. Gov't Code § 552.117(a). We note that an individual's personal post office box is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear that purpose of section 552.117 is to "protect public employees from being harassed at *home*" (emphasis added) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985))). 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). You inform us that the employees at issue made a timely election for confidentiality under section 552.024. Therefore, we conclude that, with the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Upon review, we find the department

must withhold the motor vehicle record information we have marked in Exhibit C under section 552.130 of the Government Code.

Next, you raise section 552.102(a) of the Government Code for some of the remaining information in Exhibit C. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review of the information at issue, we find the department must withhold the date of birth you have marked in Exhibit C under section 552.102 of the Government Code.

In summary, the department may withhold questions 2, 5, 9, and 11 in Exhibit B, as well as the candidates' answers to these questions, under section 552.122(b) of the Government Code. In Exhibit C, the department must withhold: (1) the information you have marked under section 552.117(a)(1) of the Government Code, with the exception of the city, state, and zip code we have marked for release; (2) the motor vehicle record information we have marked under section 552.130 of the Government Code; and (3) the date of birth you have marked under section 552.102 of the Government Code.

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/dls

Ref: ID# 480327

Enc. Submitted documents

c: Requestor
(w/o enclosures)