



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2013

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

OR2013-05223

Dear Ms. Benya:

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# 482858.

The Texas Department of Criminal Justice (the "department") received a request for the application documents for the applicant chosen for a specified position; information pertaining to the education and experience of the chosen applicant; the rationale for the selection of the chosen applicant; and the interview documentation for the chosen applicant and the requestor, including the interview questions, recommended responses, and responses of the chosen applicant and the requestor.¹ You state the department has released or will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.102 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code 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 held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll

¹You indicate the department received clarification from the requestor of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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). Having carefully reviewed the information at issue, we conclude the department must withhold the information you have marked under section 552.102(a).

We note the submitted information includes personal information of a current department employee that is subject to section 552.117(a)(3) of the Government Code.² In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3), regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, the department must withhold the information we have marked under section 552.117(a)(3) in accordance with Open Records Letter No. 2005-01067.

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 state the questions and answers for which you raise section 552.122 “are intended to display the technical expertise of the applicant.” You contend release of the information at issue would “compromise the effectiveness of future examinations” because the department reuses similar interview questions. Upon review, we conclude the interview questions we have marked qualify as test items under section 552.122(b). We also find release of the model answers and the applicants’ responses to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the interview questions and the corresponding model answers and applicants’ responses we have marked under section 552.122(b). We find, however, the remaining information only evaluates an applicant’s individual abilities, personal opinions, and subjective ability to respond

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to particular situations, and does not test any specific knowledge of an applicant. Accordingly, we determine the remaining information does not consist of test items under section 552.122(b) and may not be withheld on that basis.

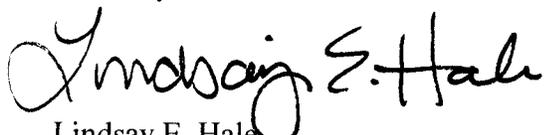
We note some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130(a)(1) provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We conclude the department must withhold the information we have marked under section 552.130(a)(1).

In summary, the department (1) must withhold the information you have marked under section 552.102 of the Government Code; (2) must withhold the information we have marked under section 552.117(a)(3) of the Government Code in accordance with Open Records Letter No. 2005-01067; (3) may withhold the information we have marked under section 552.122 of the Government Code; and (4) must withhold the information we have marked under section 552.130 of the Government Code. The department must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the department to withhold the dates of birth of former and current department employees under section 552.102(a) of the Government Code, without seeking a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); ORD 673. We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 482858

Enc. Submitted documents

c: Requestor
(w/o enclosures)