



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2013

Ms. Amy Benya
Assistant General Counsel
TDCJ-Office of the General Counsel
P.O. Box 4004
Austin, Texas 77342-4004

OR2013-05403

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# 483043.

The Texas Department of Criminal Justice (the "department") received a request for information regarding HRSII - Labor Relations Criminal History Records Coordinator, including the interview documentation for the selected applicant and the requestor and the selected applicant's application with any corresponding documents. You state you have released some of the requested information to the requestor. 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 552.122 of the Government Code 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 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 submitted interview questions are “intended to display the technical expertise of the applicant” and the department prefers to use similar questions from one position selection to the next. Further, you argue release of the information at issue could compromise future interviews. Having considered your arguments and reviewed the submitted information, we conclude questions 3, 5, 6, and 8 are test items for purposes of section 552.122(b) of the Government Code. Further, we find the release of the recommended and actual responses to questions 3, 5, 6, and 8 would tend to reveal the questions themselves. Therefore, the department may withhold questions 3, 5, 6, and 8 and their recommended and actual responses, which we have marked, under section 552.122(b) of the Government Code. We find, however, the remaining questions, responses, and the applicants’ closing remarks only evaluate the applicants’ individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of the applicants. Accordingly, we determine the remaining questions, responses, and the applicants’ closing remarks do not consist of test items under section 552.122(b) and may not be withheld on that basis.

Next, you raise section 552.102(a) of the Government Code for some of the remaining information. 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 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, we find the department must withhold the information you have marked under section 552.102 of the Government Code.

Portions of the remaining information are subject to section 552.117 of the Government Code.¹ Section 552.117(a)(3) excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a current or former employee of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code. Gov’t Code § 552.117(a)(3). Thus, the department must withhold the information we have marked under section 552.117(a)(3) of the Government Code.²

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note Open Records Letter No. 2005-01067 (2005) serves as a previous determination that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code.

The remaining information contains driver's license information. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country is excepted from public release. *Id.* § 552.130(a)(1). Upon review, we find the department must withhold the driver's license information we have marked under section 552.130 of the Government Code.

In summary, the department may withhold questions 3, 5, 6, and 8 and their recommended and actual responses under section 552.122(b) of the Government Code. The department must withhold the information you have marked under section 552.102 of the Government Code, the information we have marked under section 552.117(a)(3) of the Government Code, and the information we have marked under section 552.130 of the Government Code. 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, 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 483043

Enc. Submitted documents

c: Requestor
(w/o enclosures)