



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2017

Ms. Lindsey Aston
General Counsel
Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2060

OR2017-27222

Dear Ms. Aston:

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# 687094.

The Office of the Secretary of State (the "secretary's office") received a request for employment records pertaining to a named individual. The secretary's office states it has released some information. The secretary's office also states it will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and e-mail addresses pursuant to Open Records Decision No. 684 (2009).¹ You argue some of the submitted information is not subject to the Act. You claim the submitted information is excepted from

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, the secretary's office contends its IP address is not subject to the Act. The Act is applicable only to "public information." Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as:

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). In Open Records Decision No. 581 (1990), this office determined that certain computer information such as source codes, documentation information and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor to Act). We understand the secretary's office to assert its IP address has no significance other than their use as tools for the maintenance, manipulation, or protection of public property. We disagree. The information at issue pertains to the use of the secretary's office's computers and networks by employees of the secretary's office. Thus, we find the secretary's office's IP address does have public significance other than its use as a tool for

²We assume 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.

the maintenance, manipulation, or protection of public property. Accordingly, we find the information at issue is public information subject to the Act. As you raise no exceptions to disclosure for the secretary's office's IP address, this information must be released.

Section 552.122 of the Government Code exempts from 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 portions of the remaining information include notes from interview questions and the completed tests for applicants who apply for a specified position. We understand the secretary's office anticipates using these questions in future interviews. Based on your representations and our review, we conclude the information we marked qualifies as "test items" under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to these questions would reveal the questions themselves. Therefore, the secretary's office may withhold the questions and corresponding answers we marked under section 552.122(b) of the Government Code. However, we find the remaining information at issue evaluates an individual's experience and subjective abilities to respond to particular situations and does not test any specific knowledge. Upon review, we find you have failed to demonstrate how this information constitutes a test item or reveals test questions under section 552.122(b) of the Government Code. Thus, the secretary's office may not withhold the remaining information on the basis of section 552.122(b) of the Government Code.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. We note a post office box number is not a "home address" for purposes of section 552.117(a). *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). We also note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by

section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You state, and have submitted documentation demonstrating, the employee whose information is at issue timely elected confidentiality under section 552.024 of the Government Code. Therefore, the secretary's office must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the secretary's office may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body. However, we find the secretary's office failed to demonstrate the applicability of section 552.117(a)(1) to the remaining information at issue. Accordingly, none of the remaining information at issue may be withheld on that basis.

We note the requestor is as an employee of the Texas Comptroller of Public Accounts. Accordingly, the secretary's office has the discretion to release the information pursuant to an intergovernmental transfer. This office has concluded information subject to the Act may be transferred between governmental bodies without waiving exceptions to the public disclosure of that information. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. However, the transfer of confidential information from one governmental body to another is prohibited where a relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute's enumerated entities. *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655, 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). Sections 552.117 and 552.122 of the Government Code do not have specific release provisions governing public release. Therefore, pursuant to the intergovernmental transfer doctrine, the secretary's office has the discretion to release any information that is subject to sections 552.117 and 552.122 to this requestor. Furthermore, release of information pursuant to an intergovernmental transfer does not constitute a release of information to the public for purposes of section 552.007 of the Act. *See, e.g.*, Attorney General Opinion Nos. H-917 at 1 (1976), H-242 (1974); *see also* Gov't Code §§ 552.007, .352. Thus, the secretary's office does not waive its interest in withholding this information by exercising its discretion under the interagency transfer doctrine.

In summary, the secretary's office has the discretion to release the submitted information to the requestor. If the secretary's office chooses not to exercise its discretion under the intergovernmental transfer doctrine, then the secretary's office: (1) may withhold the information we marked under section 552.122(b) of the Government Code; (2) must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the secretary's office may only withhold the cellular telephone number at issue if the service is not paid for by a governmental body; and (3) must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/som

Ref: ID# 687094

Enc. Submitted documents

c: Requestor
(w/o enclosures)