



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 28, 2019

Mr. Robert M. Summers
Director of Government Filings
Office of the Secretary of State
P.O. Box 13375
Austin, Texas 78711-3375

OR2019-02371

Dear Mr. Summers:

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# 747976.

The Office of the Secretary of State (the "secretary of state's office") received a request for the complaint files pertaining to a named individual. You state you will release some information. The secretary of state's office 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, e-mail addresses pursuant to Open Records Decision No. 684 (2009), and dates of birth pursuant to Open Records Letter No. 2016-07153 (2016).¹ You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Open Records Letter No. 2016-07153 authorizes the secretary of state's office to withhold public citizens' dates of birth from notary applications and contained in the Notary Public Unit Database of the secretary of state's office under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a ruling from this office.

Section 552.122(b) of the Government Code excepts from disclosure “[a] test item developed by a licensing agency or 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.” 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.* at 7. 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).

The secretary of state’s office seeks to withhold the submitted questions and answers under section 552.122 of the Government Code. The secretary of state’s office indicates the questions test the knowledge and abilities of applicants in a particular area. The secretary of state’s office also states it uses the submitted questions on a continuing basis. Based on these representations and our review, we find the submitted questions are “test items” under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, the secretary of state’s office may withhold the question and answers we marked under section 552.122(b) of the Government Code. However, we find you failed to demonstrate the remaining information constitutes a test item or reveals test questions. Thus, the secretary of state’s office may not withhold the remaining information on the basis of section 552.122(b) of the Government Code. The secretary of state’s office 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,



Emily Buchanan
Attorney
Open Records Division

EB/som

Ref: ID# 747976

Enc. Submitted documents

c: Requestor
(w/o enclosures)