



February 8, 2000

Mr. Leonard W. Peck Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P O Box 4004
Huntsville, Texas 77342

OR2000-0468

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131942.

The Texas Department of Criminal Justice ("TDCJ") received a request from an applicant for her own interview documentation and another applicant's interview documentation for a Program Administrator II position with TDCJ. You claim that the request only pertains to the questions, recommended answers and actual answers and you assert that they are excepted from required public disclosure pursuant to section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request . . . a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not fully comply with section 552.301(e) because you did not submit copies of: question numbers 3 and 4; the recommended answers for question numbers 1 through 4; and the other applicant's answers to question numbers 1 through 4.

Under section 552.302, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make a compelling demonstration to

overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2.

Section 552.122(b) of the Government Code excepts from required public disclosure "test item[s] developed by a . . . governmental body." 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. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of further examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

After careful review of the document submitted, we have concluded that TDCJ may not withhold question numbers 1 and 2 and the applicant's actual answers because they do not represent a "standard means by which an individual's . . . knowledge or ability in a particular area is evaluated." *See* Open Records Decision No. 626 at 6 (1994). Nor do they "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual." *Id.* Rather, we believe that they merely address the applicant's overall suitability for employment. *Id.* In addition, you did not submit question numbers 3 and 4, the recommended answers for question numbers 1 through 4, and the other applicant's answers to question numbers 1 through 4 for our review; thus, we have no basis upon which to make a determination. Therefore, this information is presumed public. As you have not shown a compelling reason to overcome the presumption that this information is public, TDCJ must also release this requested information to the requestor.

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.

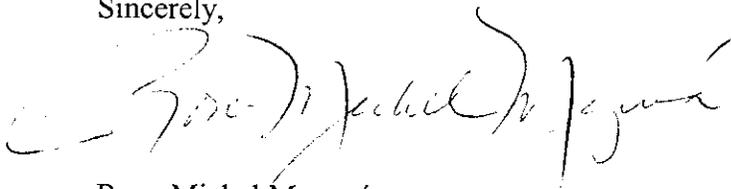
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Rose-Michel Munguía
Assistant Attorney General
Open Records Division

RMM/jc

Ref: ID# 131942

Encl. Submitted documents

cc: Mr. Billye Boles
4755 Odom Road, #4
Beaumont, Texas 77706
(w/o enclosures)