



March 21, 2000

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

OR2000-1106

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# 133107.

The Texas Department of Criminal Justice (the "department") received a request for information related to specified job postings. You claim that the questions, answers given, and recommended answers to questions used in interviewing for the subject positions are excepted from disclosure under section 552.122 of the Government Code. You have submitted this information to this office for review. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122(b) 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(b) 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(b) where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Further, when answers to test questions might reveal the questions themselves, the answer may also be withheld under section 552.122. *Id.* at 8; *see* Attorney General Opinion JM-640 at 3 (1987).

From our review of the submitted materials we conclude that most of the questions and answers "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual," are a "standard means by which an individual's or group's knowledge or ability

in a particular area is evaluated,” and “involve an evaluation of an applicant’s knowledge in a particular area.” Open Records Decision No. 626 at 6 (1994). Therefore, these are “test items” as contemplated by section 552.122(b). However, we have marked certain other items which are not excepted as “test items.” Except as marked otherwise, the submitted questions, answers given and recommended answers may be withheld under section 552.122 of the Government Code. The marked items must be released.

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.

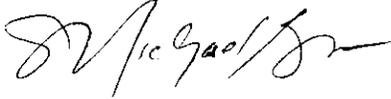
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge 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,

A handwritten signature in black ink, appearing to read "Michael Jay Burns". The signature is stylized and cursive.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 133107

Encl Submitted documents

cc: Mr. Thomas Halik E.-Shabazz
1006 East Hancock
Beeville, Texas 78102
(w/o enclosures)