



June 8, 2000

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2000-2231

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136613.

The Texas Department of Criminal Justice (the "department") received a written request for the "Reference Checks and the Interview Documentation forms" for four positions for which the requestor applied with the department. You contend that certain information contained in the requested interview documentation forms is excepted from required public disclosure pursuant to sections 552.117(3) and 552.122(b) of the Government Code.¹

Section 552.117(3) of the Government Code makes confidential, among other things, the social security number of department employees. The interview documentation forms at issue reveal the applicants' and interviewers' social security numbers. The department must withhold the social security numbers of current department employees pursuant to section 552.117(3).² No other social security number may be withheld pursuant to section 552.117(3).³

¹Because you do not contend that the remaining requested information is excepted from public disclosure, we assume the department has released the other information to the requestor. If it has not, it must do so at this time. See Gov't Code § 552.301, .302.

²We note, however, that the requestor has a special right of access to her own social security number pursuant to section 552.023 of the Government Code.

³You have not demonstrated, nor is this office aware, that any of the remaining social security numbers are made confidential under the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which makes confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990." We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

You next contend that certain interview questions and corresponding answers contained in the interview documentation forms are excepted from required public disclosure pursuant to section 552.122(b), which protects a “test item developed by a . . . governmental body.” Section 552.122(b) is applicable only where the test item constitutes a “standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” This exception does not apply to evaluations of an employee’s overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *Id.*

After reviewing the information at issue, we agree that the interview questions that you seek to withhold constitute a standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated and that the recorded answers to those questions tend to reveal the substance of the test item. *See* Open Records Decision No. 626 at 8 (1994) (when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b)); Attorney General Opinion JM-640 at 3 (1987). Accordingly, the department may withhold those questions and answers pursuant to section 552.122(b). The remaining portions of the interview documentation forms must be released 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).

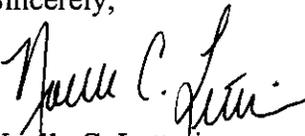
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/RWP/ljp

Ref: ID# 136613

Encl. Submitted documents

cc: Ms. Mimi McBroom
P.O. Box 7044
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(w/o enclosures)