



July 11, 2000

Ms. Linda Wiegman
Supervising Attorney
Office of the General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR2000-2580

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136946.

The Texas Department of Health (the “department”) received a request for information regarding a specific job posting for a bureau chief position. You have submitted to this office a representative sample of the requested information, with portions which you consider protected from required disclosure highlighted.¹ You inform us that the non-highlighted information will be made available to the requestor, but assert that the highlighted information is excepted from disclosure under sections 552.101, 552.117, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

¹We note that on page 1 of your request for a decision, you state that you enclose representative samples of the requested information, but on page 2 you state that “[m]ost of the requested information will be reviewed by the requestor, except the enclosed documents” If the enclosed documents are a representative sample, we assume that they are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

²You inform us that the department received the initial request for information on April 20, 2000, and a modified request on April 28. If a request for information is not clear to a governmental body, it may ask the requestor for a clarification. *See* Gov’t Code § 552.222(b). During the interval in which the governmental body and the requestor are communicating in good faith to narrow or clarify a request, the governmental body’s deadline under section 552.301 to seek a decision from this office is tolled. *See* Open Records Decision No. 663 at 5 (1999). You do not inform us of the circumstances leading to the modification of the request or of the dates during which a modification was considered; however, we will assume that the deadline under section 552.301 to seek a decision from this office was tolled for at least one day, making your request for a decision timely.

The information you submitted includes questions used to interview applicants for the position, as well as preferred answers and the applicants' actual answers. 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).

You indicate that the department may use the same questions and preferred answers to evaluate applicants in future interviews and state that release of those items would "compromise the effectiveness of future examinations and would limit [the department's] ability to select the best qualified candidate for any future interviews." After reviewing the submitted documents, we agree that questions 1 and 2 of the first round of interviews and questions 1, 2, and 3 of the second round, the preferred answers to each of those questions, and the candidates' answers are protected "test items." They "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual" and are a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." ORD 626 at 6. The department may withhold those items under section 552.122. *Id.* at 8 (when answers to test questions might reveal the questions themselves, the information may be withheld under section 552.122); *see* Attorney General Opinion JM-640 at 3 (1987).

In addition, section 552.117(1) of the Government Code excepts from required public disclosure the home address, home telephone number, social security number, or existence of family members of a current or former employee of a governmental body, if that employee has elected not to allow public access to that information under section 552.024 of the Government Code. You inform us that the selected applicant did choose not to allow public access to that information; therefore, the department must withhold that information of the hired applicant. *See* Open Records Decision Nos. 622 (1994), 455 (1987). We have also marked one additional piece of information on page 9 of the employment history which must be withheld under section 552.117(1).

In summary, the department may withhold all the marked information. Because we find sections 552.122 and 552.117(1) to be dispositive, we will not address your other claimed exceptions.

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.

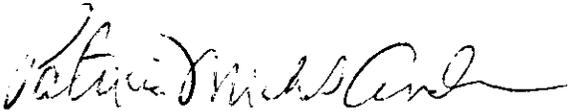
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136946

Encl. Submitted documents

cc: Ms. Maria Vega
5315 Presidio Road
Austin, Texas 78745
(w/o enclosures)