



July 18, 2000

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

OR2000-2696

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# 137234.

The Texas Department of Criminal Justice (the “department”) received a request for the “Interview Documentation Forms” and “the questions that were asked at the board” for a specified job posting. You state that the information that is responsive to the request is “being provided to the requestor,” except you seek to withhold “the questions and model answers for Questions 1 and 10-14 and the actual answers provided for Questions 11, 13, and 14.” You have submitted this information for our review, and you assert that this 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.

Section 552.122 of the Government Code excepts from required public disclosure “a test item developed by a . . . governmental body[.]” Gov’t Code § 552.122(b). This office has stated that a “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. Open Records Decision No. 626 at 6 (1994). When answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122. *Id.* at 8; Attorney General Opinion JM-640 at 3 (1987). The question of whether specific information falls within the ambit of section 552.122(b) must be determined on a case-by-case basis. ORD 626 at 6. 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).

You seek to withhold standardized questions and recommended and actual responses contained in the submitted documents. You inform us that the department's employment selection process includes structured interviews in which all interviewees are asked the same specific questions. You explain that these questions are intended to test the job applicant's technical expertise. You inform us that the same questions and model responses are used repetitively. You assert that public disclosure of the questions and the recommended and actual responses at issue would undermine the fairness and effectiveness of the employment process. Based on your representations and our review of the submitted information, we believe that the standardized questions, recommended responses, and actual answers at issue are excepted from disclosure in this instance. We have marked the information at issue. The department may withhold this information under section 552.122 of the Government Code.

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 Garbarino", written over a faint, larger version of the same signature.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137234

Encl. Submitted documents

cc: Ms. Sharon Threadgall
P O Box 379
Onalaska, Texas 77360
(w/o enclosures)