



January 10, 2001

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

OR2001-0104

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# 143056.

The Texas Department of Criminal Justice (the "department") received a request for all interview documentation forms for all applicants regarding the position of Major at the Garza Unit. The requestor specifically seeks such documentation forms for the screening and the final interviews. You claim that portions of the requested information are excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information at issue.<sup>1</sup>

We begin with your arguments regarding section 552.122. 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 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

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<sup>1</sup>While it appears that you have submitted all of the interview questions for both sets of interviews, it seems that you have only submitted a representative sample of all of the applicants' answers to those questions. We assume that the "representative sample" of records submitted to this office is truly representative of all of the information at issue. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 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 have submitted two sets of interview materials: one set dated September 5, 2000, and the other dated September 22, 2000. Of the set dated September 5, 2000, you claim that questions 1, 2, 3, 4, and 6 are excepted under section 552.122. In regard to the set of questions dated September 22, 2000, you claim that questions 1 through 4 are excepted under section 552.122. We agree that these interview questions that you have identified test knowledge or ability in a particular area, and therefore, are excepted under section 552.122. Moreover, we find that the recommended and actual answers to these questions are excepted as well as they tend to reveal the questions.

In addition to interview questions and answers, the submitted information contains social security numbers of job applicants, at least some of whom you state are department employees. Subsection 552.117(3) provides for the confidentiality of home addresses, home telephone numbers, and social security numbers of the department's employees, as well as information that would reveal whether the employees have family members. Therefore, under section 552.117(3), the department must withhold the social security numbers and home addresses of department employees.

To the extent the social security numbers at issue belong to job applicants who are not department employees, such social security numbers may be confidential under section 552.101 in conjunction with federal law. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Accordingly, section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes confidential social security numbers and related records that have been obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* In this case, it is not apparent to us that the social security numbers contained in the requested information have been obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the city to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I). We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, the department should ensure that these numbers have not been obtained or maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, in regard to the September 4, 2000 set of materials, the department may withhold questions 1, 2, 3, 4, and 6 and those questions' corresponding answers under section 552.122. As to the September 22, 2000 set of materials, the department may withhold questions 1, 2, 3, and 4 and those questions' corresponding answers under section 552.122. The department must withhold any social security numbers of department employees under section 552.117(3). Any remaining social security numbers may be confidential under section 552.101 in conjunction with federal law. The department must release the remaining submitted information.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/er

Ref: ID# 143056

Encl: Submitted documents

cc: Ms. Christi Robertson  
P.O. Box 113  
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(w/o enclosures)