



February 12, 2001

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 13084  
Capitol Station  
Austin, Texas 78711

OR2001-0526

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# 144070.

The Texas Department of Criminal Justice (the "department") received a request seeking, in part, "interview documentation forms to include questions and answers" provided by the requestor and by the applicant selected for the position. You have submitted for our review an "interview Documentation Form" containing four enumerated questions, the recommended response to each, and the actual answers provided.<sup>1</sup> You claim that the requested 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.

At the outset, we note that you have redacted from the submitted documents the social security number of the requestor. If the requestor is an employee of the department, this information is confidential with respect to the general public pursuant to section 552.117 of the Government Code. *See* Gov't Code § 552.117(3). The social security number may also be confidential under section 552.101 of the Government Code in conjunction with 1990

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<sup>1</sup>You twice submitted the responsive information to this office, and in both instance, the information includes a recommended and actual response to a fifth question. However, in neither submission is the fifth question submitted. This decision therefore does not address the fifth question, its recommended response, or the actual answers to the fifth question.

amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). These provisions, however, are intended to protect the privacy of the subject of the information. The requestor thus has a special right of access to his own social security number. *See* Gov't Code § 552.023. Thus, in this instance, you may not withhold the requestor's social security number.

Section 552.122 of the Government Code exempts 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 questions 1, 2, 3, and 4 and their corresponding actual and recommended responses contained in the submitted documents, and you represent to this office that the same questions and model responses are used repetitively. Further, your representations indicate that the department's employment selection process includes structured interviews in which all interviewees for the type of position in question are asked these same specific questions. Our review of the information at issue indicates that questions 1 and 2, on their face, appear to test the job applicant's technical expertise or particular job-related knowledge. We accordingly agree that these standardized questions and their corresponding recommended and actual responses are excepted from disclosure. The department may withhold this information from the requestor pursuant to section 552.122 of the Government Code.

However, as to questions 3 and 4, we find these questions, on their face, appear to test the applicant's subjective ability to respond to a particular hypothetical situation. Neither the questions nor the recommended responses appear to either test the applicant's technical expertise or particular job-related knowledge, and you have not explained how these questions comprise test items. Accordingly, questions 3 and 4 and their recommended and actual responses are not excepted from disclosure by section 552.122 and 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).

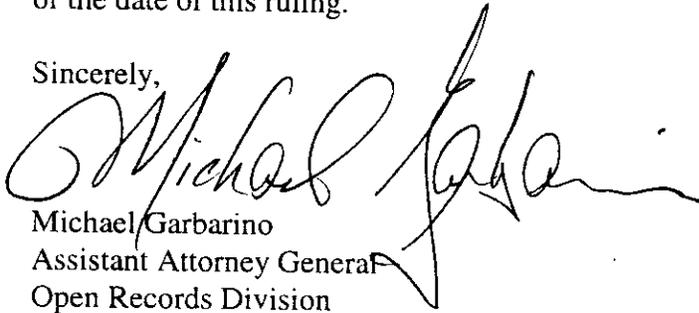
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael Garbarino  
Assistant Attorney General  
Open Records Division

MG/seg

Ref: ID# 144070

Encl. Submitted documents

cc: Mr. Bradley Worley  
45 Oak Bend Drive  
Huntsville, Texas 77320  
(w/o enclosures)