



May 30, 2001

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

OR2001-2219

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# 147775.

The Texas Department of Criminal Justice (the “department”) received a request for copies of “all releaseable [sic] information” concerning a certain department job posting. You assert that you seek a decision only with respect to certain test questions and answers used in the posting interview process, and you claim that the requested information is excepted from disclosure under sections 552.117 and 552.122(b) of the Government Code. Because you seek an answer solely with respect to the interview questions and answers, we assume that you have released all other information responsive to the request. We have considered the exceptions you claim and reviewed the submitted information.

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 Decision No. 626 at 6 (1994). After reviewing the submitted information, which consists of 10 questions and the requestor’s answers to those questions, we conclude that questions 1 through 8 test an individual’s or group’s knowledge or ability in a particular area. Because the answers tend to reveal the questions, the department may withhold questions 1 through 8 and the answers to these questions under section 552.122(b). The remaining questions and answers must be disclosed, with the exceptions noted below.

The portion of the information containing the requestor's answers contains employees' social security numbers. You assert that the social security numbers are confidential under section 552.117. Section 552.117(3) excepts from required public disclosure information that relates to home address, home telephone number, social security number, or family member information of an employee of the department, regardless of whether the employee complies with section 552.024 by submitting a written request that such information be kept confidential. See Gov't Code § 552.117(3). Accordingly, the social security number of the department employee who is not the requestor, which we have marked for your convenience, must be withheld from disclosure under section 552.117(3).

However, of the two social security numbers that appear in the information, one of the numbers is that of the requestor. Section 552.023 provides that a person has a right of access beyond the right of the general public to information which is held by a governmental body and relates to that person and is protected from disclosure by laws intended to protect that person's privacy interests. See Gov't Code § 552.023(a). In these circumstances, the requestor's social security number is not confidential.

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).

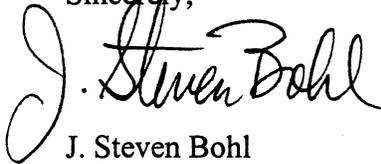
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 cursive script that reads "J. Steven Bohl". The signature is written in black ink and is positioned to the left of the typed name.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/sdk

Ref: ID# 147775

Encl: Marked documents

cc: Ms. Vicke Mossbarger
Rt. 5 Box 1500E
Angelton, Texas 77515
(w/o enclosures)