



October 31, 2001

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

OR2001-4989

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# 154164.

The Texas Department of Criminal Justice (the "department") received a request for three categories of information relating to a Trainer III job posting in Lubbock, Texas. You inform us that most of the requested information is being provided to the requestor, but you claim that certain interview questions and their model and actual answers are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the comments submitted to this office by the requestor. *See Gov't Code § 552.304.*

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 or applicant's overall job performance or suitability. Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *Id.* at 8. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6.

Having reviewed the submitted questions you seek to withhold, we conclude that only questions 1 and 2 in the "Interview Documentation Form" for the "Training Specialist

III/Staff Development" position, are "test items" as contemplated by section 552.122(b). Therefore, you may withhold these questions and their model and actual interviewee answers under section 552.122(b). We find that the remainder of the questions evaluate a prospect's overall job suitability, and are not "test items" under section 552.122(b). Therefore, question numbers 3-7, along with their respective model and actual interviewee answers, must be released to the requestor in this instance.

With regard to the "Interview Documentation Form" for the "Training Specialist - Staff Services" position, we also find that questions 1 and 2 are test items for purposes of section 552.122(b). Therefore, you may withhold these questions and their model and actual interviewee answer under section 552.122(b). We find that the remainder of the questions evaluate a prospect's overall job suitability, and are not "test items" under section 552.122(b). Therefore, question numbers 3-6, along with their respective model and actual interviewee answers, must be released to the requestor in this instance.

Finally, we note that the pages to be released also contain the social security number of the applicant. Section 552.117(3) of the Government Code exempts from public disclosure "information that relates to the home address, home telephone number, or social security number, or that reveals whether" a department employee has family members. The department must withhold these types of information pursuant to section 552.117(3). Thus, if the applicant is already a department employee, the social security number must be withheld under section 552.117(3). If the applicant is not a department employee, the social security numbers may be withheld in some circumstances under section 552.101 of the Government Code, which exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and 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.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, we find that the first two questions in each "Interview Documentation Form" are excepted from disclosure as test items and therefore, these questions and their model and actual interviewee answers may be withheld under section 552.122(b). The remaining items must be released to the requestor. However, if the applicant is already a department

employee, the social security numbers must be withheld under section 552.117(3). If the applicant is not a department employee, social security numbers must be withheld if they were obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

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,


Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 154164

Enc. Submitted documents

c: Mr. Lawrence Ertner
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(w/o enclosures)