



January 24, 2002

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

OR2002-0353

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# 157758.

The Texas Department of Criminal Justice (the "department") received a request for the interview questions and recommended responses of the requestor and the successful applicant for the Human Resources Specialist II position recently filled at the Kegans State Jail Facility. The requestor also asked for information pertaining to who made the hiring decision and what the justification was for selecting the successful applicant. You claim that a portion of the requested information is 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 information.

First, we note that you are limiting your request for a ruling to certain test questions and their answers. To the extent that information pertaining to who made the hiring decision and what the justification was for selecting the successful applicant existed at the time the department received the present request, we assume such information has been released to the requestor. If not, the department must release such information. Gov't Code §§ 552.301, .302.

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, questions 1, 2, 4, 6, and 7, we conclude that questions 1, 2, and 7 in the "Interview Documentation Form" for the "Human Resources Specialist II" 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 questions 4 and 6 evaluate a prospect's overall job suitability, and are not "test items" under section 552.122(b). Therefore, question numbers 4 and 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 numbers of the applicants. Section 552.117(3) of the Government Code excepts 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). As you indicate that the applicants are already department employees, the social security number of the successful applicant must be withheld under section 552.117(3). The social security number of the requestor must be released to her. *See* Gov't Code § 552.023.

To summarize, we find that questions 1, 2, and 7 in the submitted "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 two test items you seek to withhold must be released to the requestor. The social security number of the successful applicant must be withheld under section 552.117(3). The social security number of the requestor must be released to her.

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 Texas Building and Procurement 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# 157758

Enc. Submitted documents

c: Ms. Mercedes Lee
8110 Audubon Forest Drive
Humble, Texas 77396
(w/o enclosures)