



July 11, 2002

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

OR2002-3778

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# 165505.

The Texas Department of Criminal Justice (the "department") received a request for documents relating to job posting 032126PF04, including interviewer notes and final selection notice, questions and model answers (including interviewer notes), and a final ranking of interviewed applicants. You claim that some of the 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.

Initially, we note that you do not seek to withhold portions of the requested information. You state that "this request is only about the questions and answers that were part of the documentation" relating to job posting 032126PF04 and argue "that all thirteen (13) questions are test items." Accordingly, to the extent that other responsive information exists, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

We turn now to your arguments under 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 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). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

After reviewing the submitted information, we conclude that questions number 1, 2, 8, 9, 10, and 13, are "test items" within the meaning of 552.122. Because the model and actual interviewee answers may disclose these questions, these answers may also be withheld under section 552.122(b). However, we do not believe that interview questions 3, 4, 5, 6, 7, 11, or 12, test an individual's or group's knowledge or ability in a particular area, but rather, evaluate an applicant's experience and overall job suitability. Therefore, you may not withhold from disclosure the questions or model or actual interviewee answers to interview question 3, 4, 5, 6, 7, 11, or 12 under section 552.122(b).

You also raise section 552.117(3) of the Government Code, which exempts from disclosure a department employee's home address, home telephone number, or social security number, and any information that reveals whether an employee has family members, regardless of whether the employee complies with section 552.024. *See* Gov't Code § 552.117(3). You indicate that the information contains the social security numbers of several department employees. Accordingly, the department must withhold the social security numbers of all department employees pursuant to section 552.117(3).

We note that the other social security numbers may be confidential under federal law. A social security number may be withheld in some circumstances 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 responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the 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.

We also note that the requestor has a special right of access to his own social security number under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (providing that person or person's authorized representative has special right of access, beyond that of general public, to information held by governmental body that relates to that person and is protected from disclosure laws intended to protect that person's privacy interests). Thus, the department may not withhold the requestor's social security number under section 552.101.

In summary, the department may withhold from disclosure the questions and model and actual interviewee answers to interview questions 1, 2, 8, 9, 10, and 13 under section 552.122(b). The department must withhold the social security number of all department employees under section 552.117(3), and the social security numbers of the other applicants to the extent they 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. The requestor's own social security number must be released to him pursuant to section 552.023. The remaining information 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 165505

Enc: Submitted documents

c: Mr. David Robison
2505 Second Avenue
Dallas, Texas 75210
(w/o enclosures)