OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

July 15, 2002

Ms. Sylvia F. Hardman
Deputy Commissioner of Legal Services
Texas Rehabilitation Commission
4900 North Lamar Boulevard
Austin, Texas 78751-2399

OR2002-3813

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165756.

The Texas Rehabilitation Commission (the "commission") received several requests for, among other things, the questions and answers asked of applicants for the position of Program Administrator IV.[1] You contend that the requested information is excepted from required public disclosure pursuant to section 552.122(b) of the Government Code.

Section 552.122(b) of the Government Code protects a "test item developed by a . . . governmental body." Section 552.122(b) is applicable only where the test item constitutes a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." 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). This exception does not apply to evaluations of an employee's overall job performance or suitability. *See id.* at 6. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *See id.*

[1]Because you do not argue that any of the other requested information is excepted from public disclosure, we assume the commission has released this other information to the requestors. If it has not, it must do so at this time. *See* Gov't Code §§ 552.301, .302.

After reviewing the submitted materials, we agree that the following questions and expected responses constitute a standard means by which an individual's or group's knowledge or ability in a particular area is evaluated: Unit 11 questions (as prepared by Lori Broccolo) 1, 2, 3, 4, 5, 6, 8, and 9; Unit 11 questions (as prepared by Connie A. Miller) 1, 2, 3, and 8; and Unit 60 questions 1, 2, 3, 4, 5, 6, 7, and 8. The commission must release the remaining questions and answers to the requestor.

Finally, you have asked that we issue to the commission a previous determination allowing the commission to withhold interview questions and model answers without requesting a ruling. As noted above, 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). For this reason, we decline to issue a previous determination that would grant the commission the authority to withhold categorically all interview questions and answers.

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,

VGSchimmel

V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 165756

Enc: Submitted documents

c: Ms. Sheila Carter
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