OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 16, 2003

Mr. James M. Frazier, III
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2003-0331

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175917.

The Texas Department of Criminal Justice (the "Department") received a request for the following information regarding two Laundry Manager III positions: 1) interview documentation and applications of the successful candidates selected for each position and 2) the requestor's responses to questions during his interviews for these positions. You assert that some of the requested information is excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have reviewed the information you submitted and considered the exceptions you claim.

Initially, we note that you have only submitted responsive documents pertaining to the interview questions and answers. Therefore, we assume that you have released any remaining responsive information 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.

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).

You contend that both sets of submitted interview questions and their respective recommended and actual responses are excepted from disclosure under section 552.122(b) of the Government Code. Having reviewed your arguments and the information at issue, we conclude that these interview questions and their recommended and actual responses qualify as "test items" for the purposes of section 552.122(b). Therefore, the Department may withhold the submitted questions and answers under section 552.122(b) of the Government Code.

Additionally, you assert section 552.117(3) of the Government Code applies to the responsive information. Section 552.117(3) excepts from public disclosure information relating to the home address, home telephone number, the social security number, and family members of Department employees. While we agree with your assertion that the Department must withhold such information on the submitted responsive documents, we note that information protected under sections 552.117(3) is intended to protect a person's privacy. Therefore, section 552.023 of the Government Code provides the requestor a special right of access to his social security number. *See* Gov't Code § 552.023(a) (granting a person a special right of access to certain information held by a governmental body when the basis for withholding the information is to protect that person's privacy interests). Accordingly, the submitted documents contain no information subject to redaction under section 552.117(3).

To summarize: (1) the Department may withhold the test questions and the associated recommended and actual answers under section 552.122(b) of the Government Code; and (2) the Department has submitted no documentation subject to redaction under 552.117(3) of the Government Code.

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).

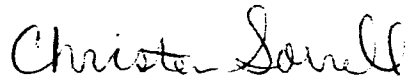
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 175917

Enc: Submitted documents

c: Mr. Paul C. Loehr
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Beeville, Texas 78102
(w/o enclosures)