



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 30, 2003

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

OR2003-0650

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#175772.

The Texas Rehabilitation Commission (the "commission") received a request for information pertaining to the questions and answers of all applicants for posting number 0983, Manager I (POD). The requestor also asks for a copy of the selection matrix for this job posting. You claim that the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you only seek a decision from this office regarding the submitted questions and answers of each applicant and not the requested selection matrix. Further, you have not indicated whether a selection matrix exists or that you wish to withhold the selection matrix from disclosure. Therefore, to the extent a selection matrix exists, we assume that you have released it to the requestor. If you have not released the selection matrix, 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 all of the submitted interview questions and answers are excepted from disclosure under section 552.122(b) of the Government Code. After reviewing the submitted information, we have determined that the first portion of interview question number one that we have marked, along with interview questions numbered three, nine, and ten constitute "test items" as contemplated by section 552.122(b) and accordingly may be withheld along with the answers for each. However, the remaining submitted interview questions, along with their answers, do not satisfy the section 552.122 criteria and must be released.

Next, we note that the submitted documents contain information that may be excepted under section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the home address, home telephone number, and social security number of a current or former employee of a governmental body, as well as information that reveals whether the employee has family members, if the current or former employee timely requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). This information may not be withheld, however, in the case of a current or former employee who made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, to the extent that any of the applicants are current or former commission employees who made timely elections under section 552.024, you must withhold their social security numbers under section 552.117.

We also note that social security numbers that are not otherwise excepted from disclosure under section 552.117 might nevertheless 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 at issue 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 commission pursuant to any provision of law, enacted on or after October 1, 1990.

Lastly, we note that section 552.023 of the Government Code gives a person a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. As section 552.117 and the Social Security Act are laws intended to protect a person's privacy interest, and the requestor is a person whose privacy interest the commission seeks to protect, you may not withhold from Linda Monk the personal information relating to Ms. Monk under section 552.117 or the federal statute. Therefore, the commission must release to Ms. Monk her own social security number.

In summary, the commission must withhold under section 552.117 current or former commission employees' social security numbers, but only to the extent the employees timely elected to keep this information confidential in accordance with section 552.024 of the Government Code. Prior to releasing any social security numbers not so excepted, you should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990. The commission may withhold the first portion of interview question number one that we have marked, along with interview questions numbered three, nine, and ten, and the corresponding applicants' answers pursuant to section 552.122(b). Lastly, the commission must release to Ms. Monk her own social security number. The remaining submitted 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 175772

Enc: Submitted documents

c: Ms. Linda Monk
13010 Moorcraft Lane
Austin, Texas 78729
(w/o enclosures)