



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

April 21, 2003

Ms. Gretchen Black  
Assistant City Manager  
City of Leon Valley  
6400 El Verde Road  
Leon Valley, Texas 78238

OR2003-2649

Dear Ms. Black:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179707.

The City of Leon Valley (the "city") received two requests for information pertaining to the promotion process in the city Fire Department, including test scores, educational points, years of service point, related certifications and education, and interview points. You claim that the actual review questions and written answers by the interviewers are 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 did not submit information responsive to the remainder of the two requests for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to those aspects of the requests 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; see also Open Records Decision No. 664 (2000).*

Section 552.122(b) of the Government Code protects from public disclosure a "test item developed by a . . . governmental body." 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).* 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.” 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.*

After reviewing the submitted materials, we agree that some of the questions constitute a standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated and thus may be withheld pursuant to section 552.122(b). We find, however, that the answers do not reveal the questions themselves, and thus, may not be withheld under section 552.122(b). We have marked the questions that the city may withhold under section 552.122(b). The remaining interview questions and all of the answers 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 Dep’t of Pub. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 179707

Enc. Submitted documents

c: Mr. Oscar Valdez  
c/o Gretchen Black  
City of Leon Valley  
6400 El Verde Road  
Leon Valley, Texas 78238  
(w/o enclosures)