



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 28, 2003

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

OR2003-3606

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# 181774.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's interview documentation and responses for a particular job, as well as Rosalinda Orozco's application, interview documentation, responses, and justification. You claim that the requested 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 your request for a decision does not address Ms. Orozco's application or interview justification, nor have you raised any exceptions to disclosure of such information. We assume that the department has released this information to the extent that it exists. If you have not, you must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

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, actual responses and model responses are excepted from disclosure under section 552.122(b) of the Government Code. After reviewing the submitted information, we have determined that the submitted interview questions constitute “test items” as contemplated by section 552.122(b) and accordingly may be withheld. Further, we conclude that the submitted actual and model interview responses reveal the test questions themselves and may be withheld under section 552.122.

You claim that section 552.117 may also be applicable to some of the submitted information. Section 552.117(3) of the Government Code requires the department to withhold “information that relates to the home address, home telephone number, or social security number of... or... reveals whether” a department employee “has family members.” We agree that the submitted documents contain social security numbers that must be withheld pursuant to section 552.117(3). However, 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 is a law intended to protect a person’s privacy interest, and the requestor is a person whose privacy interest the department seeks to protect, you may not withhold from Angelina Baez the personal information relating to Ms. Baez under section 552.117. Therefore, the department must release to Ms. Baez her own social security number.

In summary, the department may withhold the submitted interview questions, actual responses and model responses under section 552.122. The department must withhold the social security numbers of department employees under section 552.117(3). Lastly, the department must release to Ms. Baez her own social security number pursuant to section 552.023.

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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 181774

Enc: Submitted documents

c: Ms. Angelina Beaz
605 North Avenue D
Beeville, Texas 78102
(w/o enclosures)