



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

August 28, 2003

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2003-6062

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187043.

The Texas Department of Criminal Justice (the "department") received a request for a copy of the requestor's "Risk Management board exam." You inform us that information responsive to this request is the Interview Documentation Form for the Alternate Risk Management CO III position at a Beaumont area prison facility. You claim that seven questions asked on this form and the recommended responses are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 or applicant's overall job performance or suitability. Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *Id.* at 8. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6.

Having reviewed the submitted questions you seek to withhold, we find that question numbers one through six are "test items" for purposes of section 552.122(b). However, we

find that question number seven evaluates a prospect's overall job suitability and is not a "test item" under section 552.122(b). Therefore, questions one through six, along with their recommended responses, may be withheld from the requestor in this instance. Question number seven and its recommended response must be released to the requestor, along with the remaining submitted information.

We note the submitted information contains a social security number. A social security number may be withheld in some circumstances under 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.* However, a person has a special right of access, beyond the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect a person's privacy interests. Gov't Code § 552.023(a). In this case, the social security number belongs to the requestor, who has a special right of access to this information. Thus, the department must release the requestor's social security number to her.

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. 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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jh

Ref: ID# 187043

Enc. Submitted documents

c: Ms. Lois Rice  
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(w/o enclosures)