



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2003

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

OR2003-8916

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# 192508.

The Texas Rehabilitation Commission (the "commission") received a request for the interview responses of an individual selected for posting number 0433 Manager I (Program Operations Director), and for the interview responses of the requestor. Additionally, the requestor seeks the selection matrix and the TRC-14 justification memo related to this matter.¹ You state that the commission is releasing part of the requested information to the requestor. You claim, however, that interview questions and 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) of the Government Code 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). This office has generally found section 552.122 to apply in cases 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,

¹You advise that the requestor subsequently narrowed the request to exclude social security numbers. *See Gov't Code § 552.222.*

the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

You contend that the submitted interview questions and expected responses are excepted from disclosure under section 552.122(b) of the Government Code. After reviewing the information, we agree that one of the interview questions at issue tests an individual's knowledge or ability in a particular area and thus constitutes a "test item" as contemplated by section 552.122(b). Accordingly, the commission may withhold the question and corresponding answers we have marked pursuant to section 552.122(b) of the Government Code. We find, however, that the remaining questions relate to an individual's overall suitability for employment and do not test an individual's knowledge or ability in a particular area. Thus, the remaining information may not be withheld under section 552.122 and must be released to the requestor.

In response to your request for a previous determination, we note that if the commission were to receive another request for the identical interview questions at issue in the present request, this ruling would serve as a previous determination allowing the commission to withhold the interview question that we find is excepted from disclosure under section 552.122. *See* Open Records Decision No. 673 (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 192508

Enc: Submitted documents

c: Ms. Linda Monk
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(w/o enclosures)