



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2004

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

OR2004-0278

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# 194122.

The Texas Rehabilitation Commission (the "commission") received four requests for information relating to a particular job posting, including the matrix, the interview questions, and the expected and actual responses to the questions. You inform us that you have released some of the requested information. You claim that the remaining information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). 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. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* 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). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

Having considered your arguments and reviewed the submitted interview questions, we find that questions 2, 3, 4, 5, 6, 8, and 10 qualify as test items under section 552.122(b). We also find that the release of the expected and actual answers to these questions might reveal the questions themselves. We therefore conclude that the commission may withhold questions 2, 3, 4, 5, 6, 8, and 10 and the expected and actual responses to those questions under section 552.122(b). With regard to the remaining information that you seek to withhold under section 552.122, we find that questions 1, 7, and 9 do not constitute test items. Therefore, questions 1, 7, and 9 and the expected and actual responses to those questions are not excepted from disclosure under section 552.122.

You also inform us that the submitted documents contain the social security numbers of employees of the commission. Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time that the request for the information is received by the governmental body. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the commission may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who requested confidentiality for that information under section 552.024 prior to the commission's receipt of the request for the information. The commission may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely request for confidentiality under section 552.024. You inform us that the employees of the commission to whom the submitted social security numbers pertain timely elected to keep their social security numbers confidential under section 552.024. We note, however, that two of these social security numbers are those of two of the requestors. These two requestors have a special right of access to their own respective social security numbers under section 552.023 of the Government Code.¹ Information to which an individual has a right of access under section 552.023 may not be withheld from that individual under section 552.117. We otherwise conclude, based on your representations with regard to section 552.024, that the commission must withhold the submitted social security numbers under section 552.117(a)(1).

In summary, the commission may withhold interview questions 2, 3, 4, 5, 6, 8, and 10 and the expected and actual answers to those questions under section 552.122 of the Government Code. The commission must withhold the submitted social security numbers under section 552.117(a)(1), except where the requestor has a right of access to his or her own social security number under section 552.023. The rest of the submitted information must be released.

¹See Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests).

You also ask this office to issue a previous determination that would allow the commission to withhold these particular interview questions and answers under section 552.122 without requesting another ruling. This office has determined that there are only two instances in which an attorney general decision under section 552.301 of the Government Code constitutes a previous determination under section 552.301(a). *See* Open Records Decision No. 673 (2001). The first type of previous determination applies when specific information is again requested from a governmental body and when this office has previously issued a decision that evaluates the public availability of that specific information. This type of previous determination requires that all of the following criteria be met:

1. the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code;
2. the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general;
3. the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and
4. the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling.

Open Records Decision No. 673 at 6-7 (2001). Thus, should the commission receive another request for precisely the same information that is encompassed by our decision in this instance under section 552.122, and provided that the four criteria for the first type of previous determination are met, the commission may rely on this ruling as a previous determination with regard to that information.²

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

²The second type of previous determination requires, among other things, a specific, clearly delineated category of information about which this office has previously rendered a decision. *See* Open Records Decision No. 673 at 7 (2001). Because the applicability of section 552.122 must be determined on a case-by-case basis, we decline to issue the second type of previous determination, which would grant the commission the authority to categorically withhold interview questions and answers without the necessity of requesting a decision under section 552.122.

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).

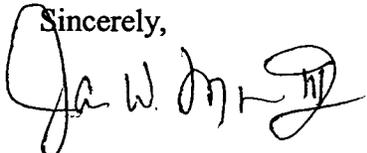
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 194122

Enc: Submitted documents

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