



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2004

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

OR2004-1088

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 196087.

The Department of Criminal Justice (the "department") received a request for information related to a particular job posting, including questions and answers and selection packets for the position concerned. You claim that the requested information is exempted from disclosure under sections 552.117, 552.122, 552.130, and 552.140 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you claim that some of the submitted information is subject to section 552.122 of the Government Code. Section 552.122(b) exempts 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 the submitted interview questions, recommended answers, and applicants' answers are excepted from disclosure under section 552.122(b) of the Government Code. Having reviewed the submitted questions, we agree that questions 1 through 5 are "test items" as contemplated by section 552.122(b). Therefore, you may withhold the questions and answers to these questions under section 552.122(b). However, we determine that question 6 does not test an individual's or group's knowledge or ability in a particular area, and therefore may not be withheld under section 552.122(b).

The submitted documents also contain personal information subject to section 552.117(a)(3) of the Government Code, which excepts the home address and telephone number, social security number, and family member information of department employees. We have marked the information that must be withheld pursuant to this provision.

The submitted documents also contain Texas driver's license information that is excepted from disclosure under section 552.130(a)(1) of the Government Code. We have marked the information that must be withheld pursuant to this provision.

Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses; however, e-mail addresses falling within the scope of section 552.137(c) are not excepted from disclosure under this section. The exception does not apply to the business e-mail addresses of government employees. We have marked the e-mail addresses that must be withheld pursuant to this provision unless the department has received affirmative consent to release them.

Finally, you assert that the submitted documents includes forms governed by section 552.140 of the Government Code, which provides that a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. Gov't Code § 552.140(a), (b). You have not indicated the date on which these forms first came into the possession of the department. If this date was on or after September 1, 2003, the department must withhold the forms under section 552.140. If this date was before September 1, 2003, the department must release the forms, while withholding the personal information protected by section 552.117(a)(3).

We note that the submitted documents include information relating to the requestor. In accordance with section 552.023 of the Government Code, the requestor has a special right of access to personal information that would be excepted from public disclosure under

provisions designed to protect his privacy. *See* Gov't Code § 552.023.¹ Therefore, information about the requestor that is subject to sections 552.117 and 552.130 must be released to him. Assuming that the requestor's DD-214 form is subject to section 552.140, the requestor also has a right of access to this form under section 552.140(c)(1).

In summary, the department must withhold the following information: (1) marked personal information concerning department employees pursuant to section 552.117(a)(3); (2) Texas driver's license information pursuant to section 552.130(a)(1); and (3) the personal e-mail addresses we have marked pursuant to section 552.137, provided that the department has not received affirmative consent to disclose these addresses. The department may withhold the questions and answers for questions 1 through 5 on the submitted interview documentation forms pursuant to section 552.122(b). The department must withhold the submitted DD-214 forms pursuant to section 552.140 if the forms first came into the possession of the department on or after September 1, 2003; otherwise, these forms must be released, with the exception of information subject to section 552.117(a)(3). The remaining information must be released.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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

¹Because this information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

fails to do one of these three things within ten 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 ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 196087

Enc. Submitted documents

c: Lieutenant Carlos Lugo
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Alice, Texas 78332
(w/o enclosures)