



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2004

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

OR2004-3759

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# 201228.

The Texas Department of Criminal Justice (the "department") received a request for information related to a Parole Officer IV position, including the interview questions and answers, the applications of two named individuals, and the rationale behind the selection of one of the named individuals. 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.

First, we note that you have not submitted information concerning the requested applications and the department's rationale for selecting a named individual for the position, nor have you indicated that you seek to withhold any such information. Therefore, if such information exists, we assume you have already released it to the requestor. If not, the department must release this information at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We will now address your arguments with respect to 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(b) 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(b) 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(b) 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 and responses are excepted from disclosure under section 552.122(b) of the Government Code. After reviewing the information, we agree that interview questions 1 through 3 test an individual's knowledge in a particular area and thus constitute "test items" as contemplated by section 552.122(b). Accordingly, the department may withhold interview questions 1 through 3, and the corresponding preferred and actual responses, pursuant to section 552.122(b) of the Government Code. We find, however, that questions 4 and 5 are not test items for purposes of section 552.122(b). Thus, the department may not withhold questions 4 and 5 or the corresponding preferred and actual responses to these questions pursuant to section 552.122(b).

We next consider your claim under section 552.117 of the Government Code. Section 552.117(a)(3) excepts the home address and telephone number, social security number, and family member information of current or former employees of the department. The submitted information contains the social security numbers of applicants. You have not indicated whether or not these applicants are employees of the department. If these applicants are employees of the department, section 552.117(a)(3) protects their social security numbers from disclosure. If these applicants are not employees of the department, section 552.117(a)(3) does not apply. We note, however, that the requestor has a special right of access to her own information pursuant to section 552.023. *See* Gov't Code § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of information). Thus, the requestor's social security number may not be withheld under section 552.117(a)(3) and must be released to the requestor.

We note that the social security numbers not subject to section 552.117(a)(3) may be excepted from disclosure under section 552.101 in conjunction with federal law. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section and encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), 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* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We also note that as the requestor has a special right of access to her own social security number, the department may not withhold that information under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I). *See* Gov't Code § 552.023(a). Otherwise, we caution that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that such information is not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the department may withhold the submitted questions and corresponding responses for interview questions 1 through 3 pursuant to section 552.122(b) of the Government Code. The department must withhold the social security number of a current or former department employee in the submitted documents pursuant to section 552.117(a)(3) of the Government Code. The social security number of an individual who is not a current or former employee of the department may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The requestor has a special right of access to her own social security number under section 552.023. The rest of the submitted 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 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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 201228

Enc. Submitted documents

c: Ms. Joyce LaPorte  
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Del Valle, Texas 78617  
(w/o enclosures)