ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2004

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

OR2004-7806

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# 209334.

The Department of Criminal Justice (the "department") received a request for questions, recommended answers, and responses pertaining to an interview for the position of sergeant in the McConnell Unit. 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.

Section 552.117(a)(3) of the Government Code excepts from public disclosure the social security numbers of employees of the department, regardless of whether the employees complied with section 552.1175. You state that social security numbers contained in the submitted information belong to current department employees. Based on this representation, we conclude that the social security numbers we have marked are excepted from release under section 552.117(a)(3).

You also assert the submitted questions, answers, and responses are excepted under section 552.122. 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 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). Having reviewed the submitted questions, we conclude that questions one, two, three, five, and seven are "test items" as contemplated by section 552.122(b). Therefore, you may withhold these questions, and their recommended answers and responses, under section 552.122(b). However, we conclude that question number six is not a test item for purposes of section 552.122(b); therefore, you may not withhold question six and its recommended answers and responses under section 552.122.

To conclude, the marked social security numbers are excepted from release under section 552.117, and questions one, two, three, five, and seven and their recommended answers and responses are excepted under section 552.122(b). The remaining 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 209436

Enc. Submitted documents

c: Mr. Eddie Fulgham
804 East Anderson
Beeville, Texas 78102
(w/o enclosures)