



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2004

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

OR2004-8625

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# 211148.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specific job posting, including the certification of compliance, the rationale for the decision, ranking, the requestor's answers to the test questions, the selected applicant's answers to the test questions, and the selected applicant's job application. You claim that portions of the requested information are 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.

Initially, we note that you have only submitted the requested interview questions and answers for our review, and that you do not seek to withhold the remaining requested information. Therefore, we presume you have released it to the requestor. If you have not, you must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

Section 552.122(b) of the Government Code excepts from 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. Open Records Decision No. 626 at 6 (1994). 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).

You contend that the submitted interview questions and responses are excepted from disclosure under section 552.122(b). After reviewing the submitted information, we find that the interview questions do not test knowledge or ability in a particular area, but rather assess overall job suitability. Consequently, none of the submitted information is excepted under section 552.122(b).

Section 552.117(a)(3) excepts from public disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a current or former employee of the department or the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175. Thus, you must withhold the social security number we have marked pursuant to section 552.117(a)(3). The remaining information must be released to the requestor.¹

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).

¹ We note that the submitted information also includes the requestor’s social security number, which would normally be excepted from disclosure pursuant to section 552.117(a)(3). In accordance with section 552.023 the requestor in this instance has a special right of access to personal information that would be excepted from disclosure under provisions designed to protect her privacy. *See* Gov’t Code § 552.023; *see also* Open Records Decision No. 481 (1987). However, if the department receives another request for this particular information from a different requestor, the department should again seek a decision from this office.

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,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 211148

Enc. Submitted documents

c: Ms. Jean Sensat
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(w/o enclosures)