



ATTORNEY GENERAL OF TEXAS
G R E G A B B O T T

February 10, 2005

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

OR2005-01255

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# 218716.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specific employment position, to include a list of all applicants, interview questions with applicants' responses, a list of candidates in order of selection ranking, and information pertaining to applicants' qualifications. You claim that the requested information is excepted from disclosure pursuant to sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You seek to withhold social security numbers of department employees pursuant to section 552.117(a)(3) of the Government Code. In Open Records Letter No. 2005-01067 (2005), issued February 4, 2005, we granted the department a previous determination finding, in part, that social security numbers of living current or former department employees are excepted from disclosure under section 552.117(a)(3). However, a department employee has a right of access to the employee's own social security number pursuant to section 552.023 of the Government Code. The previous determination authorizes the department to withhold such information without the necessity of requesting a decision from the attorney general, provided the pertinent facts and circumstances have not changed since the issuance of the prior ruling. In this case, as the relevant law, facts, and circumstances have not changed since the issuance of the prior ruling, we determine that the department must withhold social security numbers of department employees pursuant to section 552.117(a)(3) of the Government Code in accordance with the previous determination issued in Open Records Letter No. 2005-01067. *See also* Open Records Decision No. 673 at 7-8 (2001) (listing

elements of second type of previous determination under Gov't Code § 552.301(a)). However, the requestor has a right of access to his own social security number in this instance.

We next address your claim under section 552.122 with respect to the remaining submitted information. 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). Having considered your arguments and reviewed the submitted information, we find interview questions 1, 2, and 5 qualify as test items under section 552.122(b). We therefore determine the department may withhold questions 1, 2, and 5, along with the recommended responses and applicants' responses, pursuant to section 552.122(b). The remainder of the submitted information does not qualify as test items and may not be withheld under section 552.122.

In summary, the department may withhold interview questions 1, 2, and 5, along with the recommended responses and applicants' responses to the questions, pursuant to section 552.122(b) of the Government Code. The social security numbers of department employees must be withheld under section 552.117(a)(3) of the Government Code. The remainder of the submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/jev

Ref: ID# 218716

Enc: Submitted documents

c: Mr. Franklin W. Schlegel
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(w/o enclosures)