



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2005

Mr. Michael P. Mondville
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2005-01553

Dear Mr. Mondville

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# 219163.

The Texas Department of Criminal Justice (the "department") received a request for information related to the department's selection of an individual for a specified position with the department, including certain test questions, the requestor's answers to the test questions, the answers of the individual who was selected for the position, and information concerning the selected individual's gender, age, education level, and experience. Finally, the requestor seeks information that reflects the gender and age of each of the last four individuals selected for the same identified position. You claim that the requested information, or portions thereof, 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.

As a preliminary matter, we note that you have not submitted information that reflects the gender, age, education level, and experience of the individual who was selected for the specified position, nor have you submitted information that reflects the gender and age of each of the last four individuals selected for the same specified position. *See* Gov't Code §§552.301(e). Furthermore, you have not indicated whether such information exists or if you wish to withhold any such information from disclosure. Therefore, to the extent that this

information existed on the date the department received this request, we assume you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note that you claim that social security numbers contained in the submitted information are excepted from disclosure under section 552.117 of the Government Code. In Open Records Letter No. 2005-01067, issued February 4, 2005, we granted the department a previous determination finding that the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department, regardless of whether the current or former employee complies with section 552.1175 of the Government Code, are excepted from disclosure under section 552.117(a)(3) of the Government Code. That 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. You do not inform us of any change in the law, facts, and circumstances on which the prior ruling is based. As we determined in Open Records Letter No. 2005-01067, however, section 552.117 protects employee privacy. Therefore, a former or current employee's section 552.117 information must be released to that person or that person's authorized representative. *See* Gov't Code § 552.023. We conclude, however, that the department must withhold the remaining social security number at issue pursuant to section 552.117 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)).

We now turn to your arguments regarding the submitted information. Section 552.122 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) (construing statutory predecessor). 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); ORD 626 at 8.

Having reviewed the questions at issue, we agree that questions 1, 2, 3, 5, and 6 evaluate an individual's or group's knowledge or ability in a particular area. Furthermore, we find that

the answers to these questions might reveal the questions themselves. Therefore, pursuant to section 552.122 of the Government Code, the department may withhold questions 1, 2, 3, 5, and 6 as well as the corresponding preferred and actual answers pursuant to section 552.122 of the Government Code. However, we conclude that question 4 is not a test item for purposes of section 552.122(b); therefore, you may not withhold question 4 or its preferred and actual answers under section 552.122.

In summary, the department must withhold the social security number other than the one belonging to the requestor pursuant to section 552.117 of the Government Code in accordance with the previous determination issued in Open Records Letter No. 2005-01067. The department may withhold questions 1, 2, 3, 5, and 6 as well as the corresponding preferred and actual answers pursuant to section 552.122 of the Government Code. The remaining 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,

A handwritten signature in black ink, appearing to read "Cary Grace". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 219163

Enc. Submitted documents

c: Mr. Johnny R. Gordon
6803 Rockergate Drive
Missouri City, Texas 77489
(w/o enclosures)