



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2007

Ms. Patricia Fleming
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P. O. Box 4004
Hunstville, Texas 77342-4004

OR2007-00595

Dear Ms. Fleming:

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# 269371.

The Texas Department of Criminal Justice (the "department") received a request for documents pertaining to a specific job posting. You claim that the requested information is exempted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) of the Government Code exempts 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. *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).

The department states that the submitted questions are “intended to display the technical expertise of the applicant” and that the department prefers to use similar questions from one position selection to the next. Further, the department has explained how release of the information at issue could compromise future interviews. After reviewing the submitted information and your arguments, we agree that some of the submitted questions test an individual’s knowledge in a particular area and thus constitute “test items” as contemplated by section 552.122(b). Furthermore, we find that the preferred and actual answers to these questions reveal the questions themselves. Therefore, pursuant to section 552.122 of the Government Code, the department may withhold the interview questions that we have marked, as well as the corresponding preferred and actual answers. However, the remaining question merely evaluates an individual’s overall job suitability and does not evaluate that individual’s knowledge or ability in a particular area. Thus, this remaining interview question does not qualify as a test item under section 552.122(b).

We also note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. However, in accordance with section 552.023, the requestor in this instance has a special right of access to her own social security number. See Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to information that is excepted from public disclosure under laws intended to protect person’s privacy interest as subject of the information). The department must withhold the remaining social security numbers, which we have marked, under section 552.147.¹

In summary, the department may withhold the interview questions that we have marked, as well as the corresponding preferred and actual answers, pursuant to section 552.122 of the Government Code. The department must withhold the social security numbers we have marked under section 552.147. The remaining information must be released.²

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

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

²Because the records being released contain information relating to the requestor that would be excepted from disclosure to the general public in order to protect the requestor’s privacy, the department must request another ruling from our office if it receives a future request for this information from an individual other than this requestor or her authorized representative. See Gov’t Code § 552.023(b).

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).

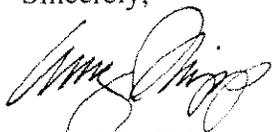
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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. 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/krl

Ref: ID# 269371

Enc. Submitted documents

c: Ms. Gina Ruiz
2501 Cheyenne
Leander, Texas 78641
(w/o enclosures)