



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2007

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

OR2007-03289

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# 274142.

The Texas Department of Criminal Justice (the "TDCJ") received a request for a copy of the "boards", which you state are the applications and interview questions and answers, for the posted positions of "Print Shop, Education, Beauty Shop, and Offender Property." You claim that the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Section 552.122(b) of the Government Code 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). This office has generally found section 552.122 to apply in cases where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

¹To the extent any additional responsive information existed on the date the TDCJ received this request, we assume you have released it. If you have not released any such records, you must do so 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).

You state that the submitted interview questions are “intended to display the technical expertise of the applicant” and do not concern the applicant’s background and experience. You further state that the TDCJ uses similar questions for each interview and selection process. After reviewing your arguments and the submitted information, we agree that the submitted interview questions test an individual’s knowledge in a particular area and thus constitute “test questions” as contemplated by section 552.122(b). Further, we find that the model and actual answers to the questions may reveal the questions themselves. As such, TDCJ may withhold the questions, model, and actual answers from all of the submitted interview forms pursuant to section 552.122(b) of the Government Code.

We find, however, that you have submitted an application to which section 552.122 does not apply. The Application for Selected Correctional Officer or Operational Review Sergeant Position (the “application”), does not test any specific knowledge of an applicant. Accordingly, we determine that the application is not a test item for purposes of section 552.122. The TDCJ may not withhold this page pursuant to section 552.122 of the Government Code.

We note that the submitted documents also contain 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. Gov’t Code § 552.147. Therefore, the TDCJ must withhold the social security numbers contained in the submitted documents under section 552.147.²

In summary, the TDCJ may withhold the questions, model, and actual answers from all of the interview forms pursuant to section 552.122(b) of the Government Code. The social security numbers must be withheld pursuant to section 552.147 of the Government Code. The remaining information must be released.³

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

²We 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.

³We note that some of the information being released is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to the information. Gov’t Code § 552.023 (person or person’s authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests). Because such information may be confidential with respect to the general public, if the TDCJ receives another request for this information from an individual other than this requestor or her authorized representative, the TDCJ should again seek our decision.

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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/krl

Ref: ID# 274142

Enc. Submitted documents

c: Ms. Sandra Pilant
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(w/o enclosures)