ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 3, 2008

Mr. Michael P. Mondville
General Counsel
Windham School District
P.O. Box 40
Huntsville, Texas 77342-0040

OR2008-07281A

Dear Mr. Mondville:

This office issued Open Records Letter No. 2008-07281 (2008) on May 29, 2008. We have examined this ruling and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on May 29, 2008. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 311301.

The Windham School District (the "district") received a request for information pertaining to two specified job positions, including answers provided by the requestor and information about the selected individual for one of the positions. You state that you have released some of the requested information. We note that you have redacted a social security number pursuant to section 552.147 of the Government Code.[1] You claim that the submitted information is excepted from disclosure under sections 552.117, 552.122, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

[1]Section 552.147 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. Gov't Code § 552.147(b).

Initially, we note that the requestor, in the request for information and comments submitted to this office, excludes from his request "all personal information exempt under [s]ection 552.117[,]" Texas driver's license information subject to section 552.130, and "the eight oral questions asked during the interview, or the one written question[.]" Thus, any of this information within the submitted documents is not responsive to the present request. Accordingly, we do not address your arguments against disclosure of this information, which we have marked, and it need not be released.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *Id.* § 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. 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).

You claim that the remaining responsive information is excepted from disclosure under section 552.122(b). You state that if the submitted answers were released, those who had access to them would have an advantage over those who did not know how to find them, thus leading to a disadvantageous selection process. You also assert that release of the information at issue would necessitate a rewrite of the interview questions. Having considered your arguments and reviewed the information at issue, we conclude that the district may withhold the information that we have marked under section 552.122 of the Government Code. However, we find that the remaining information at issue consists of answers to general questions evaluating applicants' individual abilities, personal opinions, and subjective ability to respond to a particular situation, and do not reveal questions that test any specific knowledge of an applicant. Therefore, the remaining interview answers may not be withheld from disclosure under section 552.122 of the Government Code and must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,

Paige Savoie

Paige Savoie
Assistant Attorney General
Open Records Division

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Ref: ID# 311301A

Enc. Submitted documents

c: Mr. Art Campos
224 Pine Valley Street
Huntsville, Texas 77340
(w/o enclosures)