



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 2, 2008

Ms. Charlotte A. Towe  
Assistant General Counsel  
Texas Department of Criminal Justice  
Office of the General Counsel  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2008-07427

Dear Ms. Towe:

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# 311432.

The Texas Department of Criminal Justice (the "department") received a request for information regarding the hiring process for three job openings, including interview schedules, reference checks, interview documentation, selection announcements, and rationale for non selection. You claim that the requested 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.

Initially, we note that you have not submitted any information responsive to the request for the interview schedules, reference checks, selection announcements, and rationale for non selection. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request existed on the date the request was received, we assume that 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.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . 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. 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); ORD 626 at 8.

You state that the submitted interview 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, you argue that release of the information at issue could compromise future interviews. You seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that the following questions qualify as test items for the purposes of section 552.122(b): Case Manager I / Parole Officer I - questions 1 and 2 and Parole Officer III - Unit Supervisor - questions 1, 2, and 5. Accordingly, we conclude that the department may withhold those questions, along with the actual and suggested answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions are general questions or statements evaluating the applicants' general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining questions are not test items under section 552.122(b). As you claim no other exception to disclosure, the remaining questions and answers 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 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), (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 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,



Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/mcf

Ref: ID# 311432

Enc.. Submitted documents

c: Ms. Jostell Caston  
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(w/o enclosures)