



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 31, 2008

Mr. James Mu
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2008-17647

Dear Mr. Mu:

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# 331308.

The Texas Department of Criminal Justice (the "department") received a request for the job application and all related attachments for the applicant selected for the position of Program Specialist III, as well as information used during the process of selecting the applicant. You state the department has released some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or 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. 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 claims the submitted interview questions and answers are excepted from disclosure under section 552.122(b). You state the questions are intended to display the technical expertise of the applicants and are devices by which the applicant's "knowledge or ability in a particular area is evaluated . . . in order to assure that the most qualified people are selected for the open positions" and that the department uses similar questions for each selection process. You further state that if the 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. Having considered your arguments and reviewed the information at issue, we find that interview question numbers 1 through 6 qualify as test items under section 552.122(b) of the Government Code. We also find that the release of the model and actual answers to question numbers 1 through 6 would tend to reveal the questions themselves. Therefore, the department may withhold question numbers 1 through 6, along with the corresponding model and actual answers, pursuant to section 552.122(b) of the Government Code. However, we find that the remaining interview questions are general questions evaluating applicants' individual abilities, personal opinions, and subjective ability to respond to a particular situation, and do not test any specific knowledge of an applicant. Accordingly, the remaining interview questions and the model and actual answers to the remaining questions may not be withheld from disclosure under section 552.122.

You raise section 552.137 of the Government Code for a portion of the submitted application form. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Therefore, the department must withhold the e-mail address we have marked in accordance with section 552.137, unless the department receives consent for its release.

We note that a portion of the remaining information is confidential pursuant to section 552.117 of the Government Code.¹ Section 552.117(a)(3) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former employees of the department or the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with section 552.1175. *Id.*

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

§ 552.117(a)(3). Therefore, the department must withhold the information we have marked pursuant to section 552.117(a)(3).

In summary, the department may withhold interview question numbers 1 through 6, along with their corresponding model and actual answers, pursuant to section 552.122 of the Government Code. The department must withhold the e-mail address we have marked pursuant to section 552.137 of the Government Code, unless the department receives consent for its release. The department must also withhold the information we have marked pursuant to section 552.117(a)(3) of the Government Code. The remaining 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 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,

A handwritten signature in cursive script that reads "Jordan Hale".

Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 331308

Enc. Submitted documents

cc: Requestor
(w/o enclosures)