Office of the Attorney General · State of Texas
John Cornyn

April 18, 2001

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342

OR2001-1540

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146224.

The Texas Department of Criminal Justice (the "department") received a request for all documentation concerning interviews conducted for two individuals regarding a specified position, including all interview notes, questions, recommended responses, actual responses, and rationale for selection. You claim that information pertaining to questions 1 through 6 and 10 is excepted from disclosure pursuant to section 552.122(b) of the Government Code. You also claim that the applicants' social security numbers are protected from disclosure under section 552.117(3) of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.122(b) 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. *See* Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *See id.* at 4-5; *see also* Open Records Decision No. 118 (1976). After reviewing the submitted information, we agree that questions 1 through 6 and 10 are "test

items" as contemplated by section 552.122(b) of the Government Code and may, therefore, be withheld from public disclosure. You may also withhold the recommended and actual responses to those questions, as they tend to reveal the substance of the test questions.

You also seek to withhold the submitted social security numbers under section 552.117(3). Section 552.117(3) of the Government Code excepts from disclosure the home addresses, home telephone numbers, social security numbers, and family member information of the department's employees. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Therefore, you must withhold the social security numbers from the requestor pursuant to section 552.117(3) of the Government Code. However, you must release to the requestor her own social security number. *See* Gov't Code § 552.023 (providing that individual has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987).

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 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).

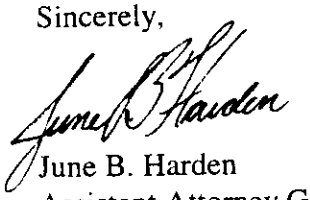
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Department of Public 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 General Services Commission 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RJB/seg

Ref: ID# 146224

Encl. Submitted documents

cc: Ms. Eve Prouty
1624 14th Street
Huntsville, Texas 77340
(w/o enclosures)