Office of the Attorney General · State of Texas
John Cornyn

December 4, 2001

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

OR2001-5643

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# 155749.

The Texas Department of Criminal Justice (the "department") received a request for application and interview information relating to the position of assistant regional director for the requestor and the successful applicant. You claim that a portion of the requested information is excepted from disclosure under sections 552.117(3) and 552.122 of the Government Code. We have considered the exceptions you claim and 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. Open Records Decision No. 626 at 6 (1994). Having reviewed the submitted questions, we agree that question numbers 2, 3, 4, 6, 7, 9, and 10 are "test items" as contemplated by section 552.122(b). Therefore, you may withhold these questions and their model and actual interviewee answers under section 552.122(b). We find that the remainder of the questions evaluate a prospect's overall job suitability, and are not "test items" under

section 552.122(b). Therefore, question numbers 1, 5, and 8, along with their respective model and actual interviewee answers, must be released to the requestor in this instance.

Section 552.117(3) of the Government Code excepts from public disclosure, among other things, the social security number of department employees. Therefore, we agree that the department must withhold the social security numbers in the submitted documents pursuant to section 552.117(3).

We note, however, that information protected under sections 552.117(3) is intended to protect a person's privacy. Therefore, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to such information. Accordingly, section 552.023 provides the requestor a special right of access to his social security number.

To summarize, we conclude that: (1) the department may withhold interview questions 2, 3, 4, 6, 7, 9 and 10, and their respective preferred and actual answers, pursuant to section 552.122(b); and (2) we have marked the information that the department must withhold under section 552.117(3). 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 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 Texas Building and Procurement 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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 155749

Enc. Submitted documents

c: Mr. Claude Williams
55 Langley Road
Huntsville, Texas 77320
(w/o enclosures)