OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

December 10, 2001

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

OR2001-5748

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# 155927.

The Texas Department of Criminal Justice (the "department") received a request for "the response to interview questions, copies of the tests, and copies of the application packets" of five named applicants for a specified position. Your request for a ruling addresses only some personal information relating to department employees and the questions and answers involved in the interview process for the job posting. We assume that you have released the remainder of the information responsive to the request. If you have not, you must do so at this time. *See* Gov't Code §§ 552.021, .301, .302; Open Records Decision No. 664 (2000). You claim that the the personal information of employees and the questions and answers are excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the social security numbers of the department's employees are confidential under section 552.117 of the Government Code. Section 552.117(3) excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a department employee has family members regardless of whether or not the employee complies with section 552.024. Thus, you must withhold any such social security numbers, home addresses, telephone numbers, and family information contained within the information that you release to the requestor. We have marked such information.

Furthermore, the submitted documents contain information that is excepted from disclosure under section 552.130. Section 552.130 excepts information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the drivers' license numbers and license class information that we have marked under section 552.130.

You claim that the submitted interview questions are excepted as "test items" under section 552.122 of the Government Code. 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).

You advise that the selection process for this position consists of three written exams (a spelling, matching, and written test) followed by a set of oral questions. Having reviewed the submitted questions, we agree that all questions in the three written exams, as well as questions 3 and 4 on the oral exam are "test items" as contemplated by section 552.122(b). Therefore, you may withhold these questions along with their corresponding responses under section 552.122(b). However, we conclude that questions 1 and 2 on the oral exam are not test items for purposes of section 552.122. Accordingly, questions 1 and 2 on the oral exam and their corresponding responses 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 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,

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/sdk

Ref: ID# 155927

Enc. Marked documents

c: Mr. Daryl Kelly
524 West Waco Drive
Waco, Texas 76701
(w/o enclosures)