



July 8, 2002

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

OR2002-3670

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# 165671.

The Texas Department of Criminal Justice (the "department") received a request for copies of the questions, interviewee answers for each question, and the "reason for selection" pertaining to a specified job posting. You state that you will provide the requestor with some responsive information. You claim, however, that the submitted information is excepted from disclosure pursuant to sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that portions of the information at issue are excepted from disclosure pursuant to section 552.122(b) 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. *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).

Based on our review of your arguments and the information at issue, we agree that questions one through three and five constitute "test items" as contemplated by section 552.122(b). Accordingly, we conclude that the department may withhold these questions from disclosure pursuant to section 552.122(b). We also agree that the department may withhold the recommended and actual responses associated with each of these questions from disclosure pursuant to section 552.122(b), as they tend to reveal the substance of each test question. However, since questions four and six through nine do not constitute "test items" under section 552.122(b), you may not withhold those questions or their respective recommended and actual answers from disclosure under section 552.122(b) of the Government Code.

You also claim that the information at issue contains social security numbers of department employees that are subject to section 552.117(3) of the Government Code. Section 552.117(3) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of an employee of the department, regardless of whether the employee complies with section 552.1175 of the Government Code. *See* Gov't Code § 552.117(3). Accordingly, we conclude that the department must withhold all social security numbers of all department employees contained within the information at issue from disclosure pursuant to section 552.117(3) of the Government Code.

In summary, the department may withhold from disclosure questions one through three and five and the recommended and actual responses associated with each of these questions from disclosure pursuant to section 552.122(b) of the Government Code. The department must withhold all social security numbers of all department employees contained within the information at issue from disclosure pursuant to section 552.117(3) of the Government Code. The department must release the remaining information 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

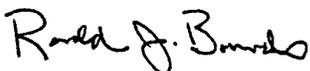
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 165671

Enc. Submitted documents

cc: Mr. Priye T. Mukoro
P.O. Box 1154
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(w/o enclosures)