OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 21, 2002

Ms. Elizabeth West
Senior Personnel Attorney
Texas Natural Resource Conservation Commission
P. O. Box 13087
Austin, Texas 78711-3087

OR2002-5946

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170915.

The Texas Commission on Environmental Quality (the "commission") received a written request for "the entire hiring packet for Position Number 2294, Manager III, for the Remediation Division." You state that some of the responsive information will be released to the requestor. You contend, however, that certain other information coming within the scope of the request is excepted from required disclosure pursuant to section 552.122(b) of the Government Code.

Section 552.122(b) of the Government Code protects from public disclosure a "test item developed by a . . . governmental body." Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). Section 552.122(b) is applicable only where the test item constitutes a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." This exception does not apply to evaluations of an employee's overall job performance or suitability. *See id.* at 6. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *See id.*

After reviewing the submitted materials, we conclude that only Question 3 constitutes a standard means by which an individual's or group's knowledge or ability in a particular area is evaluated and thus may be withheld pursuant to section 552.122(b). Consequently, the commission may withhold only Question 3 and its corresponding preferred and actual answers pursuant to section 552.122(b). We have marked the submitted documents accordingly. The remaining interview questions and preferred and actual answers 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).

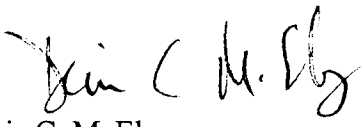
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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. 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/lmt

Ref: ID# 170915

Enc: Submitted documents

c: Mr. Joe McGill
C/O Texas Natural Resource Conversation Commission
(w/o enclosures)