



November 4, 2002

Mr. James M. Frazier III
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2002-6276

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171650.

The Texas Department of Criminal Justice (the “department”) received a request for copies of the applications and interview documentation pertaining to a specified department position. You state that you are making some responsive information available to the requestor. You claim, however, that some 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.

Initially, we note that section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. This office has previously held that a request “must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request.” Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982). Section 552.222(b) also provides that “[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]” The purpose of section 552.222 is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.¹ *See* Open Records Decision No. 663 (1999). If a requestor makes a vague

¹ Further, section 552.222(b) also limits the nature of inquiries that can be made of a requestor by the governmental body regarding requested documents. *See* Gov’t Code § 552.222(b). We note that this provision prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records. *See*

or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available that may be responsive to the request so that the requestor may narrow or clarify the request. *See id.* at 5. However, if the requestor chooses not to narrow a broad request, the governmental body must release all responsive information to the requestor, unless an exception to disclosure applies to the requested information. In that instance, the governmental body must request a ruling from our office regarding the requested information under section 552.301 of the Government Code for any information it seeks to withhold from disclosure.

We note in this instance that the department states, and provides documentation showing, that it sent the requestor a letter on August 27, 2002 seeking clarification of the request as it pertained to questions and recommended responses that were part of the screening process for applicants for the specified job posting. You also state, and provide documentation showing, that the requestor responded to that clarification request by stating "Ok. Send whatever the law allows." You further state, and provide documentation showing, that the department again sent the requestor a letter on August 30, 2002 seeking further clarification. It does not appear, however, that the department has yet received the further clarification from the requestor. In a good faith effort to provide this office with information you believe may be responsive to the request but is excepted from disclosure, the department forwarded the submitted information to us for our review. In the absence of further clarification from the requestor, we will, therefore, address your arguments for withholding the submitted information from disclosure.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *See Gov't Code § 552.122(b)*. 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 question six constitutes a "test item" as contemplated by section 552.122(b). Accordingly, we conclude that the department may withhold this question pursuant to section 552.122(b). We also agree that the department may withhold the recommended and applicants' responses associated with this question pursuant to section 552.122(b), as they tend to reveal the substance of this test question. However, since the remaining questions do not constitute

"test items" under section 552.122(b), the department may not withhold those questions or their respective recommended and applicants' answers under section 552.122(b) of the Government Code.

You also claim that some of the information at issue is excepted from disclosure pursuant 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 any social security numbers of department employees that are contained within the information at issue pursuant to section 552.117(3) of the Government Code.

We note that the information at issue may contain social security numbers of applicants for the specified position which may be excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).² These particular amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. The department has cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes it to obtain or maintain these social security numbers. Therefore, we have no basis for concluding that they are confidential under section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers at issue, the department should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the department may withhold question six and the recommended and applicants' responses associated with this question pursuant to section 552.122(b) of the Government Code. The department must withhold any social security numbers of department employees that are contained within the information at issue pursuant to section 552.117(3) of the Government Code. The social security numbers of applicants for the specified position may be confidential under federal law. The department must release the remaining submitted information to the requestor.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov't Code § 552.101*. Section 552.101 encompasses information protected by other statutes.

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

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 171650

Enc. Submitted documents

cc: Mr. Albert Odiboh
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(w/o enclosures)