



November 14, 2002

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

OR2002-6508

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# 172195.

The Texas Department of Criminal Justice (the "department") received a request for "All Documents On Board, Interview Documents Applications, on Every Body" relating to a specified posting. As responsive, you have submitted documents containing interview questions and answers and certain social security numbers. You claim that the submitted information is excepted from disclosure under sections 552.117 and 552.122 of the Government Code. To the extent that any other information is responsive to this request, we assume that it has been released. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code § 552.021, .301, .302; Open Records Decision No. 664 (2000). We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) of the Government Code protects a "test item developed by a . . . governmental body." 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." 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). 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 agree that the submitted questions constitute a standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. Thus, you may withhold the submitted questions from disclosure based on

section 552.122(b). Because the answers may reveal the questions, you may also withhold both the recommended answers and the applicant's answers based on section 552.122(b).

You also raise section 552.117(3) of the Government Code, which excepts from disclosure the home address, home telephone number, or social security number of an employee of the department, as well as any information that reveals whether an employee of the department has family members, regardless of whether the employee complies with section 552.1175. *See Gov't Code § 552.117(3)*. In releasing the responsive information, the department must withhold from disclosure the social security number of an employee based on section 552.117(3).

Finally, we note that the submitted documents contain the requestor's social security number. Social security numbers may not be subject to release to the public in some circumstances. *See Gov't Code § 552.101*; Open Records Decision No. 622 (1994). However, the requestor in this instance has a special right of access to this information. *Gov't Code § 552.023*. Because this information may be confidential with respect to the general public, if the department receives a request for this information from an individual other than the person whom the information concerns, the department should again seek our decision.

In summary, the department may withhold the submitted questions, model answers, and actual applicant answers based on section 552.122(b) of the Government Code. The department must withhold the submitted social security number belonging to the department employee based on 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. 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,



V.G. Schimmel  
Assistant Attorney General  
Open Records Division

VGS/sdk

Ref: ID# 172195

Enc: Submitted documents

c: Mr. Michael Dowden  
54 Jonesview Road  
Huntsville, Texas 77320  
(w/o enclosures)