OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 6, 2003

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

OR2003-1473

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# 177581.

The Texas Department of Criminal Justice (the "department") received a request for the interview documentation which shows the education, experience and justification for the requestor and the successful applicant, and the interview notes of three named individuals who, according to the requestor, were present during her interview. You state that the requested interview documentation for both the requestor and the successful applicant will be sent to the requestor. You also state that you only have the interview notes of the principal interviewer. We note that the Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You claim, however, that the submitted information is protected from disclosure by sections 552.117 and 552.122 of the Government Code. We have considered your arguments and reviewed the submitted information.

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). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations.

*Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). 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).

You contend that the submitted interview notes are excepted from disclosure under section 552.122(b) of the Government Code, as the notes consist of the requestor's answers to the interview questions. After reviewing the submitted information, we have determined that, with the exception of interview answer number four, the interview answers do not reveal the test questions themselves and, as such, do not satisfy the section 552.122 criteria. Thus, the department may only withhold interview answer number four of the submitted interview notes from disclosure under section 552.122.

You also contend that the submitted interview notes contain information that may be excepted under section 552.117(3) of the Government Code. Section 552.117(3) of the Government Code excepts from public disclosure, among other things, the social security number of department employees. We note, however, that section 552.023 of the Government Code gives a person a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. As section 552.117(3) is intended to protect a person's privacy interest, and the requestor is a person whose privacy interest the department seeks to protect, you may not withhold from the requestor her social security number.

To summarize, the department may only withhold interview answer number four from the submitted interview notes under section 552.122(b). The remainder of the interview notes 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

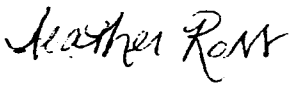
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 Dep't of Pub. 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 177581

Enc: Submitted documents

c: Ms. Mary McMurrough
P.O. Box 73
Dayton, Texas 77535
(w/o enclosures)