



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2003

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

OR2003-5739

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# 186076.

The Texas Department of Criminal Justice (the "department") received a request for the interview documentation forms that relate to a particular job posting. You claim that the requested information is excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" 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. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* 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). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994). You claim that section 552.122(b) is applicable to all of the submitted interview questions and responses. Having considered your arguments and reviewed the submitted information, we find that questions 3, 4, 5, and

6 qualify as test items under section 552.122(b). We also find that the release of the responses to these questions might reveal the questions themselves. Therefore, the department may withhold interview questions 3, 4, 5, and 6 and the corresponding preferred and actual responses under section 552.122 of the Government Code. As we conclude that interview questions 1 and 2 do not qualify as test items under section 552.122(b), the department may not withhold any of the information that relates to questions 1 or 2 under section 552.122.

Next, we address your claim under section 552.117 of the Government Code. We note that the Seventy-eighth Legislature amended section 552.117 to except from public disclosure the present and former home addresses and telephone numbers, social security number, and family member information of "a current or former employee of the [department] or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.1175." *See* Act of May 28, 2003, 78th Leg., R.S., S.B. 1388, § 1 (to be codified at Gov't Code § 552.117(a)(3)); *see also id.* § 4 (providing for immediate effectiveness of bill on receipt of vote of two-thirds majority of all members elected to each house). Thus, the social security number of a current or former employee of the department must be withheld from the public under section 552.117(a)(3). We note, however, that the requestor has a special right of access to her own social security number under section 552.023 of the Government Code.¹ Information to which the requestor has a right of access under section 552.023 may not be withheld from her under section 552.117.

We also note that the social security number of an individual who is not a current or former employee of the department may be excepted from disclosure under section 552.101 of the Government Code.² A social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that any social

¹*See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning herself).

²Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential.

security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. Furthermore, because the requestor has a special right of access to her own social security number under section 552.023, the department may not withhold that information from her under section 552.101 in conjunction with the federal law. Otherwise, we caution you that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See Gov't Code §§ 552.007, .352.* Therefore, before releasing a social security number to the public, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the department may withhold interview questions 3, 4, 5, and 6 and the preferred and actual responses to those questions under section 552.122(b) of the Government Code. The department must withhold the social security number of a current or former employee of the department, with the exception of the requestor's social security number, under section 552.117(a)(3). The social security number of an individual who is not a current or former employee of the department may be excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. The requestor has a special right of access to her own social security number under section 552.023. The rest of the submitted information is not excepted from disclosure and must also be released.

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

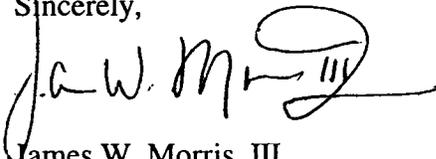
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large, stylized initial "J".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 186076

Enc: Submitted documents

c: Ms. Sharon M. Streetman
205 Liberty Street
Gatesville, Texas 76528-3173
(w/o enclosures)