



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2003

Ms. Sylvia F. Hardman
Deputy Commissioner of Legal Services
Texas Rehabilitation Commission
4900 North Lamar Boulevard
Austin, Texas 78751-2399

OR2003-8306

Dear Ms. Hardman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191261.

The Texas Rehabilitation Commission (the "commission") received two requests for, among other things, the interview questions and the expected responses to those questions pertaining to an Operation Unit Manager position at Disability Determination Services. You state that each of the requestors has clarified her request to exclude social security numbers, home and mailing addresses, and home telephone numbers, and that one requestor has further excluded e-mail addresses and driver license numbers from the scope of her request. You state that some responsive information is being released to the requestors. You claim that the submitted interview questions and responses are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim 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). 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). Based on your arguments and our review of the submitted information, we conclude that

questions two, four, five, seven, eight, ten, and eleven qualify as test items for purposes of section 552.122. Therefore, the commission may withhold these questions under section 552.122(b). Furthermore, we find that the answers to these questions could reveal the questions themselves and may likewise be withheld under section 552.122. However, we conclude that questions one, three, six, and nine do not test an individual's or group's knowledge or ability in a particular area, and must be released to the requestors in this instance, along with their corresponding answers.

You have asked that we issue a previous determination that would allow the commission to withhold interview questions and answers without requesting a ruling. This office has determined that there are only two instances in which a previous determination under section 552.301(a) exists. *See* Open Records Decision No. 673 (2001). The first instance of a previous determination applies to specific information that is again requested from a governmental body where this office has previously issued a decision that evaluates the public availability of the precise information or records issued. The first type of previous determination requires that all of the following criteria be met:

1. the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code;
2. the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general;
3. the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and
4. the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling.

Open Records Decision No. 673 at 6-7 (2001). Therefore, should the commission receive another request for precisely the same information at issue here, and the four criteria are met, the commission may rely on this ruling as a previous determination with regard to that specific information.

The second type of previous determination requires that all of the following criteria be met:

1. the requested records or information at issue fall within a specific, clearly delineated category of information about which this office has previously rendered a decision;
2. the previous decision is applicable to the particular governmental body or type of governmental body from which the information is requested;

3. the previous decision concludes that the specific, clearly delineated category of information is or is not excepted from disclosure under the Act;
4. the elements of law, fact, and circumstances are met to support the previous decision's conclusion that the requested records or information at issue is or is not excepted from required disclosure; and
5. the previous decision explicitly provides that the governmental body or bodies to which the decision applies may withhold the information without the necessity of again seeking a decision from this office.

ORD 673 at 7. As noted above, 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). For this reason, we decline to issue the second type of previous determination, which would grant the commission the authority to withhold categorically interview questions and answers without the necessity of requesting a decision under section 552.122.

Accordingly, the commission may withhold questions two, four, five, seven, eight, ten, and eleven, along with their corresponding answers, under section 552.122(b). The remaining submitted information must be released to the requestors. Should the commission receive another request for precisely the same information at issue here, and the four criteria set out in Open Records Decision No. 673 are met, the commission may rely on this ruling as a previous determination with regard to that specific information.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 191261

Enc. Submitted documents

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