



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2003

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

OR2003-8579

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# 191754.

The Texas Department of Criminal Justice (the "department") received a request for the following information: (1) a State of Texas application form submitted by Stephen Kelley for job number 032676; (2) a State of Texas application form submitted by Joseph Pomponio for job number 032471; (3) the questions asked and the answers provided by Stephen Kelley, Joseph Pomponio and the requestor during their interviews. 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 reviewed the submitted information. We have also received and considered the requestor's comments. *See Gov't Code § 552.304.*

Initially, we note that the department has not submitted information related to items one and two of the requested information for our review. We therefore presume that the department has already provided the requestor with this information to the extent that it exists. If not, the department must do so at this time. *See Gov't Code §§ 552.006, .301, .302; see also Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

We will now address your arguments with respect to the submitted information. Section 552.122 of the Government Code exempts 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 state that the submitted questions "are intended to display the technical expertise of the applicant." You indicate that the department reuses these questions and contend that release of the questions and model answers would "complicate the operation of the selection system." Having considered your arguments and reviewed the questions at issue, we agree that the submitted questions evaluate an individual's or group's knowledge or ability in a particular area. Furthermore, the answers to these questions might reveal the questions themselves. Therefore the department may withhold the submitted questions as well as the corresponding preferred and actual answers pursuant to section 552.122 of the Government Code.

You also contend that portions of the requested information must be withheld under section 552.117 of the Government Code. Subsection 552.117(a)(3) requires the department to withhold the home address and telephone number, social security number, and family member information of department employees. Therefore, we agree that the department must withhold most of the submitted social security numbers under subsection 552.117(a)(3). However, we note section 552.023 of the Government Code provides a person or a person's authorized representative a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Thus, the requestor has a special right of access to his own social security number.

In summary, the department may withhold the submitted test questions and answers under section 552.122 of the Government Code. The department must withhold the submitted social security numbers of Steven Kelley and Joseph Pomponio under section 552.117 of the Government Code. However, the department must release the requestor's social security number to him as he has a special right of access to this information under section 552.023 of the Government Code. 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 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 "Debbie K. Lee". The signature is fluid and cursive, with a long horizontal stroke at the end.

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 191754

Enc. Submitted documents

c: Mr. Douglas Weisinger
3995 CR 506
Brazoria, Texas 77422
(w/o enclosures)