



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2004

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

OR2004-1852

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#197441.

The Texas Department of Criminal Justice ("TDCJ") received a request for information related to the selection by TDCJ of a particular applicant to fill the position of inventory coordinator II, including the responses to interview questions asked of all applicants.¹ You claim that the submitted 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 will first consider your arguments that the submitted interview questions, model and actual answers are excepted from disclosure under section 552.122 of the Government Code. 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

¹We note that the requestor has also specifically asked for information that reflects the successful applicant's work experience, a copy of his application and the reason for TDCJ's selection of the successful applicant. As you have not provided any information responsive to these three items for review by this office, nor raised any exceptions to disclosure for such information, we assume that TDCJ has released this information to the requestor, to the extent it exists. If not, you must release it immediately. See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

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).

After reviewing your arguments and the information, we agree that the submitted interview questions test an individual's knowledge in a particular area and thus constitute "test items" as contemplated by section 552.122(b). Further, we find that the model and actual answers to the questions may reveal the questions themselves. Additionally, you state that TDCJ anticipates using these identical interview questions for future job vacancies of this type. As such, TDCJ may withhold the questions, model and actual answers from all of the submitted interview forms pursuant to section 552.122(b) of the Government Code.

We next consider your claim under section 552.117 of the Government Code. Section 552.117(a)(3) excepts from disclosure the home address and telephone number, social security number, and family member information of current or former employees of TDCJ. You indicate that any and all such personal information contained within the submitted documents is excepted from release pursuant to section 552.117. The submitted interview documentation forms contain each interviewee's social security number. We agree that TDCJ must withhold the social security numbers of current or former employees pursuant to section 552.117(a)(3) of the Government Code. We note, however, that the requestor has a special right of access to her own information pursuant to section 552.023. *See* Gov't Code § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as subject of information). Thus, the requestor's social security number may not be withheld under section 552.117(a)(3) and must be released to the requestor.

The social security numbers of those applicants who are not current or former TDCJ employees may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).² *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers contained in the interview documentation forms are

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes.

confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by TDCJ pursuant to any provision of law enacted on or after October 1, 1990.

In summary, TDCJ may withhold all of the questions, model and actual answers from the submitted interview forms pursuant to section 552.122(b) of the Government Code. TDCJ must withhold the social security numbers reflected on the interview documentation forms of current or former employees pursuant to section 552.117(a)(3) of the Government Code. The social security numbers of any applicants who are not current or former employees, in situations in which those social security numbers were obtained or are maintained by TDCJ pursuant to any provision of law enacted on or after October 1, 1990, must be withheld from public disclosure under section 552.101 in conjunction with amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I).

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 that reads "Cary Grace". The signature is written in a cursive style and is positioned above the typed name and title.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/lmt

Ref: ID# 197441

Enc. Submitted documents

c: Ms. Melany Grabarkwitz
17 Hartley lane
Huntsville, Texas 77320
(w/o enclosures)