



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2004

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

OR2004-3968

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 201432.

The Texas Department of Criminal Justice (the "department") received a request for information, including interview questions and the applicants' responses, related to the department's selection of an individual to fill a specific position within the department. 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 first consider the applicability of section 552.117 to portions of the submitted information. Section 552.117(a)(3) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, social security numbers, and family member information of employees of the department, regardless of whether the employees complied with section 552.1175. Thus, you must withhold the social security numbers of employees of the department, with the exception of the requestor, under section 552.117(a)(3). The requestor has a special right of access to his own social security number under section 552.023 of the Government Code. *See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body for information concerning himself).*

Next, we consider the applicability of section 552.122 to the submitted interview questions, recommended responses and the applicants' responses. 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). Having reviewed the submitted questions, we agree that questions 1, 2 and 3 are "test items" as contemplated by section 552.122(b). Further, release of the answers would reveal the substance of the questions. Therefore, you may withhold questions 1, 2 and 3, the recommended responses and the applicants' responses to those under section 552.122(b). We conclude that questions 4 and 5 evaluate an individual's overall suitability for the position but do not test the individual's or group's knowledge or ability in a particular area. Therefore, the department may not withhold questions 4 and 5 or the responses to those questions under section 552.122.

In summary, the department must withhold the social security numbers of employees of the department, with the exception of the requestor, under section 552.117(a)(3). The department may withhold interview questions 1, 2 and 3, the recommended responses and the applicants' responses under section 552.122(b). The requestor's social security number and the remaining interview questions and responses 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

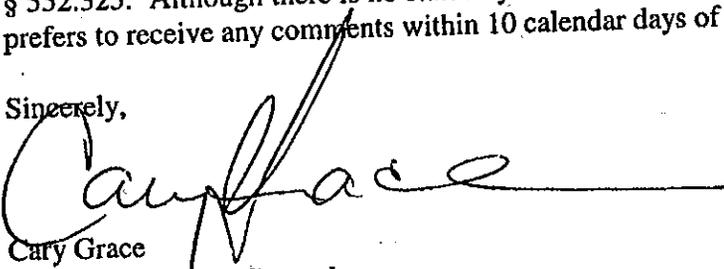
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID# 201432

Enc. Submitted documents