



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2006

Mr. William J. Philbin
Assistant General Counsel
TDCJ - Office of the General Counsel
P. O. Box 4004
Huntsville, Texas 77342-4004

OR2006-01554

Dear Mr. Philbin:

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# 242403.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's and the selected applicant's interview documentation regarding a specific position. You claim that the submitted interview questions and answers are excepted from disclosure under section 552.122 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the requestor agreed to exclude from her request any personal information in the responsive information, including social security numbers. Thus, the social security numbers are not responsive to the instant request and need not be released.

Now we turn to your arguments for the interview questions and answers. Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined

¹We presume that you have released any other responsive information, to the extent it exists. If you have not released any such records, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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. *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).

The department states that the submitted questions are “intended to display the technical expertise of the applicant” and the department tends to use similar questions from one position selection to the next. However, upon review, we find that the information at issue consists of general questions evaluating an applicant’s general workplace skills and overall suitability for employment, and does not test any specific knowledge of an applicant. Accordingly, we determine that the submitted questions are not test items for purposes of section 552.122 and the department may not withhold these questions, or the preferred or actual answers to these questions, on this basis. As you do not raise any other exceptions against disclosure, the submitted questions and preferred and actual answers must 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll

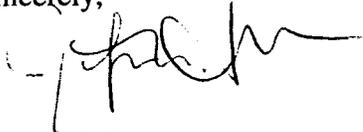
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/krl

Ref: ID# 242403

Enc. Submitted documents

c: Brenda Hambrick
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(w/o enclosures)