



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2006

Ms. Susan Camp-Lee  
Sheets & Crossfield, P.C.  
309 East Main Street  
Round Rock, Texas 78664-5246

OR2006-10877

Dear Ms. Camp-Lee:

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# 259524.

The Round Rock Police Department (the "department"), which you represent, received a request for information regarding the requestor's employment interview and application process with the department. You state you have released a portion of the information but you claim that the remaining information is 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 of the Government Code excepts from 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. Open Records Decision No. 626 at 6 (1994). 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) (construing statutory predecessor). 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); ORD 626 at 8.

The submitted information consists of two types of employment application material. The first is a set of form questions, including the requestor's responses, used by the interviewers in an oral interview, and the second is a standardized "Police Officer Selection Test" taken by the requestor. You argue that both types of material constitute test items under section 552.122 of the Government Code. With regard to the oral interview questions, you inform us that the department anticipates using these questions for future job postings and argue that release of the submitted questions would compromise the effectiveness of future examinations. We conclude that a portion of the oral interview questions and the interviewers' written responses evaluate that individual's knowledge or ability in a particular area. However, the remaining questions merely evaluate an individual's overall job suitability. Accordingly, we have marked the oral interview questions that qualify as test items and may be withheld under section 552.122(b). With regard to the "Police Officer Selection Test," you argue that you intend to reuse this test in the future and that release of the questions or answers would defeat the purpose of the test and compromise future examinations. We agree that the questions and written responses in the "Police Officer Selection Test" qualify as test items under section 552.122(b) of the Government Code. However, we find that the responses marked on the scantron answer sheet to the "Police Officer Selection Test" do not qualify as test items under section 552.122(b) of the Government Code. We therefore conclude that the department may withhold the marked portions of the "Police Officer Selection Test" under section 552.122 of the Government Code, the remaining information must be released.

In summary, you may withhold the marked information under section 552.122 of the Government Code; you must release the remaining submitted 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, 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/sdk

Ref: ID# 259524

Enc. Submitted documents

c: Mr. Mike Garrigues  
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Georgetown, Texas 78628  
(w/o enclosures)