



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 10, 2006

Ms. Carla M. Cordova  
Assistant General Counsel  
Texas Department of Criminal Justice  
Office of the General Counsel  
P. O. Box 4004  
Huntsville, Texas 77342-4004

OR2006-11768

Dear Ms. Cordova:

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# 261440.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to scoring matrices and interviews for the department's Program Specialist I position. You inform us that the submitted interview documentation is the only responsive information that the department maintains.<sup>1</sup> You claim that the submitted 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(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. See 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 (1994).

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<sup>1</sup>The Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6. This office has generally found section 552.122 to apply in cases 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* ORD 626 at 8.

You contend that the submitted interview questions, responses, and model responses are excepted from disclosure under section 552.122(b) of the Government Code. You argue that the release of these test items might undermine the selection process and compromise the effectiveness of future examinations. Having considered your arguments and reviewed the submitted information, we find that interview questions 3 and 4 qualify as test items under section 552.122(b). We also find that the release of the model and actual answers to these questions would tend to reveal the questions themselves. Therefore, the department may withhold questions 3 and 4, along with the corresponding model and actual answers, pursuant to section 552.122(b). However, we find that the remaining interview questions are general questions evaluating applicants’ individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, the remaining interview questions, as well as the model and actual answers to those questions, may not be withheld from disclosure under section 552.122 of the Government Code.

Next, we note that the remaining information includes social security numbers that are subject to section 552.147 of the Government Code.<sup>2</sup> Section 552.147 provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. We note, however, that one of the social security numbers belongs to the requestor. Because section 552.147 is intended to protect the privacy interests of individuals, the requestor has a right of access to his own social security number under section 552.023 of the Government Code and it may not be withheld from him under section 552.147. *See id.* § 552.023 (a person or a person’s authorized representative has special right of access to information excepted from public disclosure under laws intended to protect that person’s privacy interest). Therefore, other than the requestor’s social security number, the department must withhold the social security numbers in the submitted records pursuant to section 552.147.<sup>3</sup>

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception like section 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

In summary, the department may withhold interview questions 3 and 4, along with their model and actual answers, pursuant to section 552.122(b) of the Government Code. Other than the requestor's social security number, the department must withhold the social security numbers under section 552.147 of the Government Code. The remaining submitted 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 ten 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).

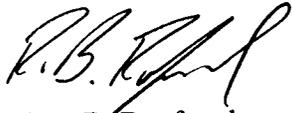
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel  
Assistant Attorney General  
Open Records Division

RBR/krl

Ref: ID# 261440

Enc. Submitted documents

c: Mr. Garry A. Japko  
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Round Rock, Texas 78664  
(w/o enclosures)