



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2007

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

OR2007-00339

Dear Ms. Fleming:

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# 269172.

The Texas Department of Criminal Justice (the "department") received a request for interview questions and answers pertaining to two specified clerk positions. You claim that the requested 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. 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). 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* Open Records Decision No. 626 at 8 (1994).

You contend that the submitted interview questions and 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 question 4 for the “Clerk III – Administrative Support” position, and interview questions 1, 2, 3, 4, 5, 6, and 8 for the “Human Resources Assistant-Insurance” position, qualify as test items under section 552.122(b). We also find that release of the model and actual answers to these question would tend to reveal the questions themselves. Therefore, the department may withhold these questions, along with the model and actual answers, pursuant to section 552.122(b). However, we find that the remaining interview questions for the “Clerk III – Administrative Support” position and the “Human Resources Assistant – Insurance” position are general questions evaluating an applicant’s individual abilities, 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, are not excepted from disclosure under section 552.122 of the Government Code, and must be released.

In summary, the department may withhold interview question 4 for the “Clerk III-Administrative Support” position, and interview questions 1, 2, 3, 4, 5, 6, and 8 for the “Human Resources Assistant-Insurance” position, along with the model and actual answers to those questions, under section 552.122 of the Government Code. The remaining information must be released to the requestor.¹

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).

¹We note that the remaining submitted information contains the requestor’s social security number. Section 552.147 of the Government Code 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. In this instance, however, the requestor has a right of access to her social security number under section 552.023(b) of the Government Code. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/krl

Ref: ID# 269172

Enc. Submitted documents

c: Ms. Paula Cox
15 Kickapoo Drive
Huntsville, Texas 77320
(w/o enclosures)