



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2007

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

OR2007-01797

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# 271566.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a job posting for a Program Specialist III, including copies of the last page of the documentation form from the applicant interviews, the interview questions and recommended responses, and any information that explains why no selection was made. You state that some of the requested information either has been or will be released. 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 have reviewed the submitted information.

We first note that some of the submitted information is not responsive to this request. Although the submitted documents contain the applicants' actual responses to the interview questions and their social security numbers, the requestor does not seek access to that information. Therefore, this decision does not address the public availability of the applicants' actual responses and social security numbers, which are not responsive to this request, and that information need not be released.

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. *Id.* at 6. 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). 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.

You seek to withhold all of the submitted interview questions and the recommended responses to the questions under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that interview questions three, four, and five qualify as test items under section 552.122(b). We also conclude that the release of the recommended answers to those questions would tend to reveal the questions themselves. Therefore, the department may withhold questions three, four, and five and the recommended responses to those questions under section 552.122. Because we also conclude that none of the remaining interview questions qualifies as a test item under section 552.122(b), the department may not withhold any of the remaining information under section 552.122. As you claim no other exception to disclosure, the rest of the responsive information 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).

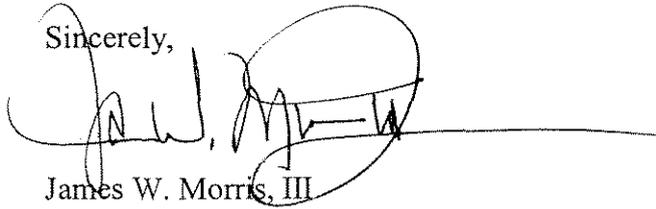
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "James W. Morris, III", is written over a horizontal line. The signature is stylized and somewhat cursive.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jww

Ref: ID# 271566

Enc: Submitted documents

c: Ms. Alicia Frezia-King
932 Farm-to-Market Road 247
Huntsville, Texas 77320
(w/o enclosures)