



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 1, 2008

Ms. Charlotte A. Towe
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2008-01521

Dear Ms. Towe:

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# 301947.

The Texas Department of Criminal Justice (the "department") received a request for the interview questions and responses pertaining to the positions of Parole Officer I, Clerk III-Human Resources Field Office, and Administrative Assistant IV- Office of the Inspector General (the "OIG"). 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.

You indicate that the department has forwarded the request for information pertaining to the Administrative Assistant IV position to the OIG, as this portion of the request implicates their information. As of the date of this letter, we have not received arguments or the responsive information from the OIG. To the extent this information exists, we assume the OIG has released it to the requestor. If not, the OIG must release it at this time. *See Gov't Code §§ 552.006, .301, .302; see Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or 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. 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 claims that the submitted information is excepted from disclosure under section 552.122(b). You state that the questions are intended to display the technical expertise of the applicants and are devices by which the applicant's "knowledge or ability in a particular area is evaluated in order to assure that the most qualified people are selected for the open positions" and that the department uses similar questions for each selection process. You further state that if the answers were released, those who had access to them would have an advantage over those who did not know how to find them, thus leading to a disadvantageous selection process. Having considered your arguments and reviewed the submitted information, we find that interview question numbers 1, 2, and 3 qualify as test items under section 552.122(b) of the Government Code. We also find that the release of the answers to question numbers 1, 2, and 3 would tend to reveal the questions themselves. Therefore, the department may withhold question numbers 1, 2, and 3, along with the corresponding answers, pursuant to section 552.122(b) of the Government Code. We have marked this information. However, we find that the remaining interview question is a general question evaluating applicants' individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test any specific knowledge of an applicant. Furthermore, we find that the remaining submitted documents do not qualify as test items for purposes of section 552.122. Accordingly, the remaining interview question, the answers to the question, and the remaining submitted documents may not be withheld from disclosure under section 552.122 of the Government Code. As you raise no other arguments against the disclosure of this information, it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/jb

Ref: ID# 301947

Enc. Submitted documents

c: Ms. Eva Colvin
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(w/o enclosures)