



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1995

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Department of Criminal Justice
P.O. Box 99
Huntsville, Texas 77342-0099

OR95-250

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27107.

The Texas Department of Criminal Justice (the "department") has received a request for information relating to the application, interview, and evaluation of an individual who had applied for an employment position. You have submitted to our office for review a number of "scoring documents" that include completed "Applicant Interview Rating Forms" and "Screening/Selection Board Summary" forms, as well as several pages containing questions and preferred answers that you indicate were used during the interview process. You assert that this information is excepted from required public disclosure by sections 552.108, 552.111, and 552.122 of the Government Code.

Relying upon the arguments that the department made in connection with a previous request for an opinion, ID# 20183,¹ you assert that the scoring documents are excepted from disclosure under 552.108 and 552.111. In Open Records Letter No. 94-652 (1994), our office held that this type of information is not excepted from disclosure under either exception. Section 552.108 excepts information which if released

¹In ID# 20183, our office consolidated several requests from the department involving similar information. These requests assigned ID#s 20875, 21845, 21841, 23445, and 24312.

would unduly interfere with law enforcement. For the reasons stated in Open Records Letter No. 94-652 (1994), we once again reject your arguments that release of the screening board summary and applicant interview forms would unduly interfere with law enforcement. Thus, these documents may not be withheld under section 552.108. Additionally, the information may not be withheld under section 552.111. Section 552.111 excepts from disclosure only internal communications consisting of advice, opinion, or recommendation relating to the policy-making processes of a governmental body. Open Records Decision No. 615 (1993). The exception does not encompass internal administrative or personnel matters. *Id.* Because the information submitted to us relates to an internal administrative and personnel matter, it is not excepted from disclosure under section 552.111.

You assert that the board questions used during the interview process and the preferred answers are excepted from disclosure because they are "test items" under section 552.122. Section 552.122 excepts in relevant part:

(a) A . . . test item developed by an educational institution that is funded wholly or in part by state revenue

(b) A test item developed by a licensing agency or governmental body.

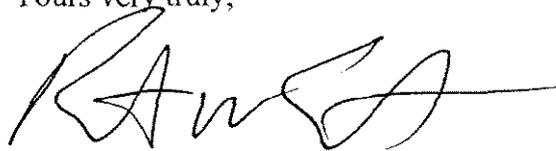
Gov't Code § 552.122. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 "includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." Open Records Decision No. 626 (1994) at 6. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*

We have examined the information that you contend is excepted from disclosure under section 552.122. We conclude that some of this information does not fall within this exception because it is not a standard means to test an individual's knowledge or ability, but rather appears to be subjective questions for the purpose of general employment evaluation. Additionally, you have not provided us with sufficient information to prove that this information is an objective test of knowledge or ability. We conclude that other information, however, constitutes test items. This type of information has been marked and may be withheld from required public disclosure under section 552.122 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS', with a long horizontal line extending to the right.

Robert W. Schmidt
Assistant Attorney General
Open Government Section

RWS/MAR/rho

Ref.: ID# 27107

Enclosures: Marked documents

cc: Mr. Dan A. Ferguson
Rt. 3, Box 396
Jacksonville, Texas 75766
(w/o enclosures)