



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 4, 1998

Ms. Jennifer D. Soldano
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1127

Dear Ms. Soldano:

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# 115206.

The Texas Department of Transportation (the "department") received a request for three categories of information concerning the position of "maintenance section supervisor II JVN # 7 09 K550 712." You explain and have demonstrated that the department has attempted to informally resolve the request for information. *See* Gov't Code § 552.222; Open Records Decision No. 333 (1982) (ten-day deadline does not begin to run during the time that the requestor and the governmental body attempt to resolve access to the records informally and there is legitimate confusion as to the scope of the request). The requestor, however, continues to seek the 22 interview questions asked during his interview, the rating criteria used to evaluate the responses to the questions, and the specific ratings the requestor received. You state that you will release the specific rating given to the requestor's responses to the interview questions. You claim, however, that the interview questions, and the rating criteria used to evaluate the applicant's responses (the predetermined answers) are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted documents.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. 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 (1994) at 6. 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).

In Open Records Letter Ruling No. 97-2612 (1997), we found that the department could withhold interview information under section 552.122. There, you indicated that the department would use the questions and criteria to evaluate applicants in future interviews. You state that the previous ruling applies equally to the requested information here. After reviewing the submitted documents, we believe that some of the questions and rating criteria (predetermined answers) are protected "test items." They "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual" and are a "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. The remaining questions are not "test items" as contemplated by section 552.122(b), and must be released; the material "does not involve an evaluation of an applicant's knowledge in a particular area." *Id.* at 8. We have marked the information that may be withheld under section 552.122.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 115206

Enclosures: Marked documents

cc: Mr. Richard L. Bone
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(w/o enclosures)