



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1998

Mr. Helmut F. Talton
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1609

Dear Mr. Talton:

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# 116352.

The Texas Department of Transportation (the "department") received a request for six categories of information relating to job packet JVN 7 52 M115 973. You state that you will release the information sought in items 1, 2, 3, 4, and 6 of the request. You claim, however, that the interview questions, desired answers, and the applicants' responses are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the sample of documents you have submitted.¹

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. 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

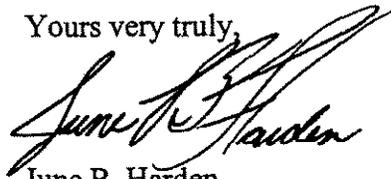
¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. However, a test item determination is made on a case-by-case basis. Open Records Decision No. 626 (1994) at 6. After careful review, we conclude that the information relating to questions #1, #4, #6 and #7 is protected under section 552.122. These questions "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 and answers 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 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 116352

Enclosures: Submitted documents

cc: Ms. Elaine Wise
1008 Floradale
Austin, Texas 78753
(w/o enclosures)