



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 6, 1998

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

OR98-1868

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117360.

The Texas Department of Transportation (the "department") received an open records request for "a copy of all documentation related to interviews" for a position. You have submitted to this office as responsive to the request a representative sample of the requested interview questions and responses. You contend that the information at issue is excepted from required public disclosure pursuant to section 552.122 of the Government Code.

Section 552.122(b) of the Government Code excepts from required public disclosure "test item[s] developed by a . . . governmental body." Section 552.122(b) is applicable to test items developed by the department, but only where the test items constitute a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated;" the exception does not apply to evaluations of an employee's overall job performance or suitability. 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.*

After reviewing the requested documents, we conclude that some of the interview questions you seek to withhold are the type of information that section 552.122 was intended to protect. These questions test the applicant's technical and practical knowledge of marine communications and consequently come under the protection of section 552.122(b). Furthermore, we conclude that the release of the responses to these test items would reveal the substance of the questions.

On the other hand, other questions you seek to withhold are more "open-ended" in nature and require subjective responses and subjective evaluations of those responses. As such, these questions address the applicant's overall suitability for employment rather than his or her knowledge or ability to perform assigned work. The department therefore may withhold only those interview items we have marked as being excepted from public disclosure pursuant to section 552.122(b);¹ the remaining interview questions must be released.

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 117360

Enclosures: Marked documents

cc: Ms. Rochelle M. Miller
3223 Avenue M
Galveston, Texas 77550
(w/o enclosures)

¹In reaching our conclusion here, we 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 No. 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.