



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1998

Mr. Helmut (Hal) Talton
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg
125 E. 11th Street
Austin, Texas 78701-2483

OR98-1972

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# 117630.

The Texas Department of Transportation (the "department") received a request for various information pertaining to the application process of Job Vacancy Notice 8-59-A040-701. You state that the department will release to the requestor portions of the information responsive to the request. You assert that the department's interview questions, desired answers, and responses given by the requestor and the applicants the department chose to fill the referenced vacancy are excepted from required public disclosure based on section 552.122 (b) of the Government Code. You have submitted representative samples of the information the department seeks to withhold from disclosure.¹

Section 552.122 (b) of the Government Code excepts from disclosure "[a] test item developed by a licensing agency or governmental body." This office defines "test item" for purposes of this exception as "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

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 Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

(1994). Whether information falls within this exception must be determined on a case-by-case basis. *See id.* at 6.

We have reviewed the submitted information. We conclude that questions 3, 5, 6, 8 and 9 are "test items" for purposes of section 552.122(b). Accordingly, the department may withhold from disclosure those questions as well as the corresponding desired answers and applicant responses.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 117630

Enclosures: Submitted documents

cc: Ms. Barbara Kullenberg
133 W. St. Elmo Road, B-107
Austin, Texas 78745
(w/o enclosures)