



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 4, 1998

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

OR98-2125

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117873.

The Texas Department of Transportation (the "department") received a request for information concerning the position of Purchasing and Supply Technician III, job vacancy number 8-15-J018-644. The requestor specifically seeks the successful applicant's application, and interview package, including questions, answers, and notes, and his own interview package. You explain that you have released the application. You also indicate that you have asked the requestor to clarify other portions of the request. Gov't Code § 552.222(b). You argue that the requested interview questions, the preferred answers, and the actual answers given are excepted from required public disclosure under section 552.122 of the Government Code. You have submitted ten interview questions along with their corresponding preferred answers and the response given by the applicant. We have considered the exception you claim and have reviewed the sample documents.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.

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). 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.

Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). 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 ask that the previous ruling's reasoning be applied in this instance. After reviewing the submitted documents, we believe that some of the questions, preferred answers, and actual responses are protected "test items." They are numbers one, three, four, five, six, and seven. 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 at 6 (1994). The remaining questions, two, eight, nine, and ten are not "test items" as contemplated by section 552.122(b), and must be released; this 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 117873

Enclosures: Submitted documents

cc: Mr. Michael May
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(w/o enclosures)