



February 26, 1999

Mr. Kevin McCalla
Director, General Law Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-0569

Dear Mr. McCalla:

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# 122445.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information relating to job posting #97238. You contend that the interview questions, desired answers, and the applicant's responses are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the information at issue.

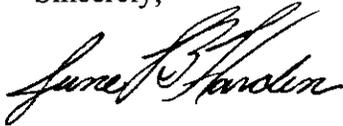
Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability 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 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).

After reviewing the submitted documents, we believe that some of the questions and answers are protected "test items" that "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). We have marked the information that the commission may withhold under section 552.122(b). 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.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 122445

Enclosures: Marked documents

cc: Mr. Steve Buoy
Finance Administration Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087
(w/o enclosures)