



September 29, 1999

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

OR99-2755

Dear Mr. McCalla:

You ask this office to reconsider our ruling in Open Records Letter No. 99-1718 (1999). Your request for reconsideration was assigned ID# 127804.

The Texas Natural Resource Conservation Commission (the "commission") received a request for information relating to Job Postings 99182 and 99229. In Open Records Letter No. 99-1718, this office concluded that the commission could not withhold the requested information under section 552.122 of the Government Code because the commission failed to timely submit the responsive documents for our review. In your request for reconsideration, you assert that the responsive information was timely submitted, and ask that we consider the merits of your original argument for withholding the requested information under section 552.122.

We have reviewed your arguments and our own internal procedures and conclude that the commission timely submitted its documents in accordance with section 552.301(b) of the Government Code. Thus, we will consider the merits of your original argument against disclosure.

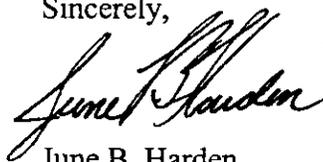
Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. We note that while section 552.122 may apply where release of test items might compromise the effectiveness of future examinations, the questions must first fall within the definition of a "test item". *Id.* at 4-5, *see also* Open Records Decision No. 118 (1976). 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).

In this instance, you seek to withhold for Job Posting 99182, the Practical Application Exercises, Questions 3, 5, and 8-15, and the interviewees' responses to those questions.¹ You indicate that the release of this information "would provide requestors an unfair advantage over other applicants and possibly lead to the selection of an applicant less qualified, but appearing better qualified because that particular applicant knew what answers the hiring panel was looking for and had practiced on the practical applications." We have considered your arguments and have reviewed the submitted sample documents.² We agree that Questions 8-15, the interviewees' responses to those questions, and the Practical Application Exercises are "test items," and may be withheld under section 552.122(b). However, we do not believe that Questions 3 and 5 test an individual's or group's knowledge or ability in a particular area, but rather, evaluate an applicant's experience and overall job suitability. Therefore, you must release to the requestor Questions 3 and 5, and the interviewees' responses to those questions. Open Records Letter No. 99-1718 is overruled to the extent that it conflicts with this ruling.

If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 127804

Encl. Submitted documents

¹You state that the other requested information has been released to the requestor.

²We 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) (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.

cc: Ms. Melody Smith
8819 Judwin
Houston, Texas 77075
(w/o enclosures)