



May 23, 2000

Ms. Janice Marie Wilson  
Associate General Counsel  
Texas Department of Transportation  
125 East. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2000-2037

Dear Ms. Wilson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135729.

The Texas Department of Transportation (“TxDOT”) received a request for the interview questions, screening criteria and the Knowledge, Skills and Ability (“KSA”) for the persons interviewed for a position for which the requestor applied. You state that you will release most of the information responsive to this request. However, you claim the grading criteria for each KSA is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of the information at issue.<sup>1</sup>

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). You state that you “do not ask to

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<sup>1</sup>In 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.

withhold the KSAs, those are listed on the Job Vacancy Notice, but rather . . . ask to withhold the grading criteria for each KSA.” In this instance, you seek to withhold KSA grading criteria used to grade the applicant in the screening process. You indicate that TxDOT maintains the practice of reusing the KSA’s in the screening process. Thus, you argue that the release of the KSA grading criteria would allow the requestor to gain an unfair advantage over all other applicants and defeat TxDOT’s ability to hire the best-qualified applicants. After reviewing the submitted information, we do not agree that the KSA grading criteria to grade applicants used in the screening process qualify as “test items” for the purposes of section 552.122(b). Therefore, the KSA grading criteria in Exhibit B may not be withheld under section 552.122(b).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

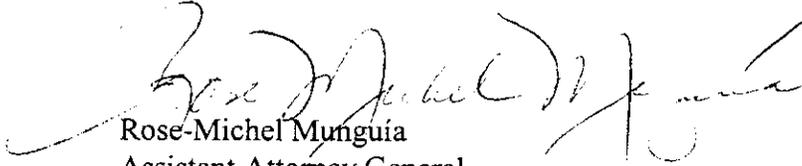
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose Michel Munguia". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Rose-Michel Munguia  
Assistant Attorney General  
Open Records Division

RMM/pr

Ref: ID# 135729

Encl. Submitted documents

cc: Ms. Amanda Stence  
1701 B. Ledgewood Drive  
Austin, Texas 78758  
(w/o enclosures)