



July 25, 2000

Mr. Don Bradley
Staff Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR20002808

Dear Mr. Bradley:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137342.

The Texas Department of Health (the "department") received a request for information relating to four specified job posting numbers. You advise us that the department has released all of the documentation relating to Nos. 00-TDH-0447, 00-TDH-0484, and 00-TDH-0498 and part of the documentation relating to No. 00-TDH-0476. You claim that the balance of the information relating to No. 00-TDH-0476 is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b); *see also* Open Records Decision No. 626 (1994). In Open Records Decision No. 626 (1994), this office determined that "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. *See id.* at 6-8. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *Id.* at 6. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of further examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). When the answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

In this instance, you seek to withhold portions of the second round of interview questions and answers pertaining to job posting No. 00-TDH-0476. You characterize that information

as “interviewing tools developed by [the department] to evaluate an interviewee’s knowledge and ability to perform the tasks for a particular position requiring specific skills [and] knowledge.” You inform us that the department’s personnel policies require the development of lists of desired knowledge, skills, and abilities that must relate to the essential functions of particular positions. You explain that the applicable list becomes part of the corresponding job posting and is used as the basis for interview questions and as the final selection criteria for the position. You further explain that proposed interview questions and desired responses must be submitted to and approved by the department’s Bureau of Human Resources before they are used in the interview process. You state that although the interview process has been completed for the position to which the information in question here pertains, the pertinent interview questions and desired responses may be used again in future interviews for other positions with similar job functions. You assert that the release of that information would compromise the effectiveness of future examinations and limit the department’s ability to select the best qualified candidates. Having considered your representations and reviewed the information that the department seeks to withhold, we conclude that substantially all of that information represents test items developed by a governmental body that are protected from public disclosure under section 552.122 of the Government Code. We have labeled one segment of the information in question that is not excepted from disclosure and must be released. The rest of the information that the department seeks to withhold is excepted from disclosure.

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).

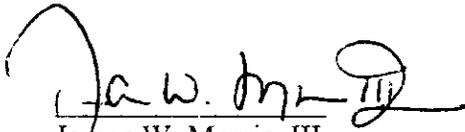
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for 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 "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 137342

Encl. Submitted documents

cc: Mr. Marc Connelly
2606 Addison Avenue
Austin, Texas 78757-2315
(w/o enclosures)