



August 11, 2000

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

OR2000-3074

Dear Ms. Wilson:

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# 138099.

The Texas Department of Transportation (the “department”) received two requests for information relating to a specified job vacancy notice. The department seeks to withhold certain interview questions, the preferred and actual answers to those questions, and scoring criteria for Knowledge, Skills, and Abilities (“KSA’s”). The department claims that the information in question 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.¹

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). 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(b) exception must be determined on a case-by-case basis. *See* 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 further examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the

¹This letter ruling assumes that the representative sample of information that you submitted is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the information that you submitted. *See* Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

You inform us that the interview questions that the department seeks to withhold evaluate applicants' knowledge in a particular area through a hypothetical scenario or a plain inquiry about abstract knowledge. You explain that the questions do not focus on qualifications or experience unique to a particular applicant. You further inform us that the department anticipates using the interview questions in connection with future job vacancies of the same kind. You express the department's concern that, if the requested test questions are released, a person with access to them might achieve full credit for answering those questions without regard to the applicant's actual experience or knowledge. You therefore argue that "release of these questions would unfairly bias future applicant pools and undermine [the department's] efforts to hire the best qualified applicants." You also seek to withhold both the preferred and the actual answers to the test questions. You contend that the actual answers reveal the nature of the interview questions. Based on your arguments and our review of the submitted test questions and answers, we agree that the questions and the preferred answers represent test items developed by a governmental body that are excepted from disclosure under section 552.122(b). We are not persuaded, however, that the actual answers that you submitted would tend to reveal the corresponding interview questions themselves. We therefore conclude that the actual answers are not excepted from disclosure.

You also seek to withhold the scoring criteria for KSA's. You inform us that in evaluating applicants for interviews, the department begins with published overall criteria for KSA's, subdivides the published qualities into component parts, and assigns each part a maximum point total.² You explain that, using a KSA scoring sheet, each applicant is graded relative to the maximum points that can be achieved, and that the applicants with the highest scores are selected for interviews, while an applicant who does not meet the KSA criteria is screened out prior to the interview stage. You contend that release of the KSA scoring criteria "would give a knowledgeable applicant a road map to ensuring an interview" and "would defeat the department's mandate to hire the best-qualified applicant." Based on your arguments and our review of the information at issue, we conclude that the KSA scoring criteria represent test items and are therefore excepted from disclosure under section 552.122. We do not agree, however, that the entire KSA scoring sheet qualifies as a test item. We have marked the portions of the submitted KSA scoring sheets that the department may withhold under section 552.122.

In summary, the submitted interview questions, preferred answers, and KSA scoring criteria are excepted from disclosure under section 552.122(b) of the Government Code and may be withheld. The actual answers to the interview questions and the other contents of the KSA scoring sheets are not excepted from disclosure and must be released.

²You state that the overall criteria for KSA's are publicly available and that the department does not seek to withhold them. We therefore assume that they will be released. *See* Gov't Code § 552.022(a)(16) (providing for required public disclosure of "information regarded as open to the public under an agency's policies").

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.

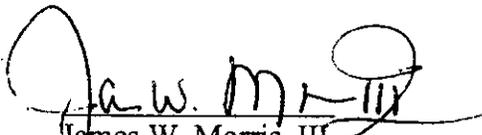
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,


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

JWM/ljp

Ref: ID# 138099

Encl. Submitted documents

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