



December 19, 2000

Mr. Craig Smith
Deputy General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR2000-4766

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142411.

The Texas Workers' Compensation Commission (the "commission") received a request for information pertaining to a particular job opening. We understand that the commission has released to the requestor the information responsive to the request, except for seven enumerated interview questions and the model and actual answers to those questions, which you have submitted for our review. You assert that the seven submitted questions and model and actual answers to those questions are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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). This office has stated that a "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. Open Records Decision No. 626 at 6 (1994). When answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122. *Id.* at 8; Attorney General Opinion JM-640 at 3 (1987). The question of whether specific information falls within the ambit of section 552.122(b) must be determined on a case-by-case basis. ORD 626 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).

You seek to withhold certain questions and recommended and actual responses contained in the submitted documents, and you represent to this office that the same questions and model responses are used repetitively. Further, it appears that the commission's employment selection process includes structured interviews in which all interviewees for the type of position in questions are asked these same specific questions. Our review of the information at issue indicates that question 1 is intended to test the job applicant's technical expertise or particular job-related knowledge. We accordingly agree that this standardized question, its recommended response, and the corresponding actual answers to question 1 are excepted from disclosure. The department may withhold this information from the requestor pursuant to section 552.122 of the Government Code.

However, as to questions 2 through 7, you have not explained how these questions test the job applicant's technical expertise or particular job-related knowledge. Without factual explanations as to how these questions comprise test items as that term is used in section 552.122, we conclude from our review of the information that questions 2 through 7 relate to the subjective prior experience, or seek the opinion, of each individual candidate and do not appear to test the applicant's technical expertise or particular job-related knowledge. As we have no basis for concluding that questions 2 through 7 meet the definition of "test items" so as to be excepted under section 552.122, we find that the commission must release to the requestor the questions numbered 2 through 7 as well as their corresponding model and actual answers.

In summary, the commission may withhold question 1, its recommended response, and its corresponding actual answers pursuant to section 552.122. The remaining information must be released to the requestor.

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

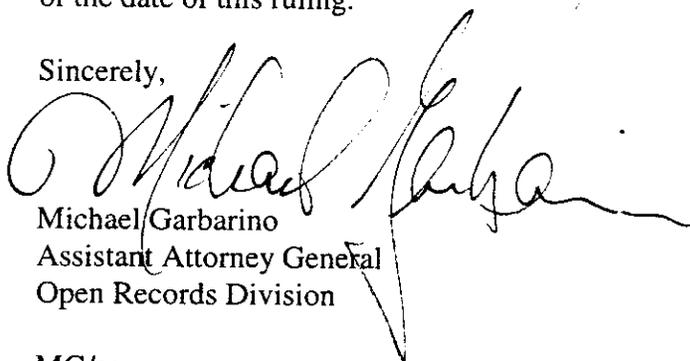
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 142411

Encl. Submitted documents

cc: Ms. Dalinda Ontiveroz
1200 Indiana #6
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(w/o enclosures)