



June 27, 2001

Ms. Elizabeth West
Senior Personnel Attorney
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR2001-2772

Dear Ms. West:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148977.

The Texas Natural Resource Conservation Commission (the "commission") received a request for records relating to Job Posting #01031. You state that most of the responsive information has been released. You claim, however, that certain interview questions and answers are excepted from disclosure under section 552.122 of the Government Code. You have submitted as responsive to the request a copy of the interview questions, model answers, and a representative sample of the applicants' answers.¹ We have considered the exception you claim and have reviewed the submitted information.

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

¹We 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.

section 552.122 may apply where release of test items might compromise the effectiveness of future examinations, the question 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).

You assert that questions 1 - 4, 7, 9 - 11, and 13, their respective model answers, and the applicants' answers to those questions are excepted under section 552.122. You argue that these interview questions address the candidates' knowledge and ability to perform certain technical skills as they relate to the required duties of the position. Furthermore, you state that the interview questions will be reused for future examinations. Based on your arguments and our review of the submitted information, we agree that questions 9 - 11 and 13 are "test items" as contemplated by section 552.122(b). These questions test the applicants' knowledge or ability in a particular area. On the other hand, questions 1 - 4 and 7 ask for general information about the applicants' work experience and do not test knowledge or ability in a particular area. Consequently, the commission may withhold interview questions 9 - 11 and 13, their respective model answers, and the applicants' answers to those questions under section 552.122(b). We note that attached to the interview questions are three documents. We presume that those documents relate to question 13. If so, they may also be withheld. However, if not, these documents must be released along with information pertaining to questions 1 - 4 and 7.

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

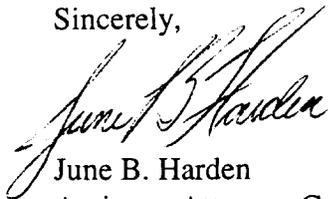
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/SPA/seg

Ref: ID# 148977

Enc. Marked documents

c: Ms. Mona Brown
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087
(w/o enclosures)