



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2009

Mr. James Mu
Assistant General Counsel
Texas Department of Criminal Justice
Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-07171

Dear Mr. Mu:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 344278.

The Texas Department of Criminal Justice (the "department") received a request for the following information concerning the department's selection of an applicant to fill the position of Inventory and Store Specialist II: (1) the selected individual's application; (2) the department's reasons for selecting this individual; (2) the interview questions and answers for the position; (3) and notes taken during the interview. You state that the some of the requested information has been, or will be made, available to the requestor. You claim that the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The submitted information is comprised of interview questions and answers. Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *See* 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 exception must be determined on a case-by-case basis. *See* Open Records Decision No. 626 at 6. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future 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 answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You have submitted the applicants' interview questions and answers for the Inventory and Store Specialist II position. You state that the submitted oral interview questions are "intended to display the technical expertise of the applicant" and that the department prefers to use similar questions from one position selection to the next. Further, you argue that release of the information at issue could compromise future interviews. You seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122. Having considered your arguments and reviewed the submitted information, we agree that the submitted interview questions qualify as test items for the purposes of section 552.122(b). We also find that release of the model and actual answers to these test items would tend to reveal the questions themselves. Therefore, the department may withhold the submitted information pursuant to section 552.122(b).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 344728

Enc. Submitted documents

c: Requestor
(w/o enclosures)