



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2009

Ms. Charlotte A. Towe
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-10981

Dear Ms. Towe:

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# 351571.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specified job posting. You claim that the requested 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.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or 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 exception must be determined on a case-by-case basis. *Id.* 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); Open Records Decision No. 626 at 8 (1994).

You claim that the submitted information is excepted from disclosure under section 552.122(b). You state that the questions are intended to display the technical expertise of the applicants and are devices by which the applicant's "knowledge or ability in a particular area is evaluated . . . in order to assure that the most qualified people are selected for the open positions" and that the department uses similar questions for each

selection process. You further state that if the answers were released, those who had access to them would have an advantage over those who did not know how to find them, thus leading to a disadvantageous selection process.

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 information at issue, we find that interview questions one, two, three, and four qualify as test items for the purposes of section 552.122(b). We also find that release of the recommended and actual answers to each of these questions would tend to reveal the question itself. Accordingly, we conclude that the department may withhold interview questions one, two, three, and four, along with the recommended and actual answers thereto, under section 552.122 of the Government Code.

We find, however, that question number five is a general question evaluating applicants' individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test any specific knowledge of an applicant. Therefore, we determine that interview question number five and its recommended and actual answers are not test items under section 552.122(b) and therefore may not be withheld on this basis.

Accordingly, the department may withhold interview questions one, two, three, and four, along with the recommended and actual answers thereto, under section 552.122 of the Government Code. The remaining submitted information must be released to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 351571

Enc. Submitted documents

c: Requestor
(w/o enclosures)