



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

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

OR2009-11112

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# 351658.

The Texas Department of Criminal Justice (the "department") received a request for the interview questions and answers for the position of Laundry Manager III, as well as the justification for selecting the winning applicant. 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.

Initially, we note that most of the submitted information was the subject of a previous ruling by this office. In Open Records Letter No. 2009-10864 (2009), this office concluded that the department must withhold certain interview questions, as well as the model and actual answers to those questions, under section 552.122 of the Government Code. As we have no indication that the law, facts, and circumstances on which the prior ruling was based have changed, the department may continue to rely on that ruling as a previous determination and withhold or release the information we have marked in accordance with Open Records Letter No. 2009-10864. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was

addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You assert that the remaining information is excepted from disclosure under section 552.122 of the Government Code. Section 552.122 excepts from 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. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) 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); ORD 626 at 8.

You state that the remaining 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 remaining interview questions, as well as the preferred answers to those questions, under section 552.122. Having considered your arguments and reviewed the submitted information, we conclude that interview questions 1 through 5 qualify as test items for the purposes of section 552.122(b). We also find that release of the model answers to these test items would tend to reveal the questions themselves. Therefore, the department may withhold interview questions 1 through 5, as well as the model answers for those questions, in the remaining submitted information pursuant to section 552.122(b) of the Government Code.

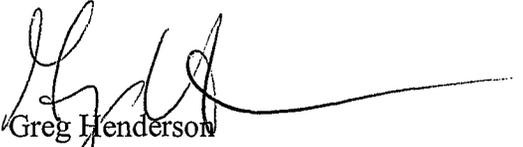
In summary, the department may continue to rely on our previous ruling as a previous determination and withhold or release the information we have marked in accordance with Open Records Letter No. 2009-10864. The department may withhold interview questions 1 through 5, as well as the model answers for those questions, in the remaining submitted information pursuant to section 552.122(b) of the Government Code. As no further exceptions to disclosure are raised, the remaining information must be released.

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,

A handwritten signature in black ink, appearing to read 'Greg Henderson', with a long horizontal flourish extending to the right.

Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#351658

Enc. Submitted documents

c: Requestor
(w/o enclosures)