



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2009

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2009-13042

Dear Ms. Alexander:

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# 356313.

The Texas Department of Transportation (the "department") received a request for the requestor's "last DOM screening and interview documents and ranking summaries." 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 representative sample of information.¹

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

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.

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 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 conclude that interview questions nine and ten qualify as test items for the purposes of section 552.122(b). We also conclude that the release of the recommended and actual answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that the department may withhold interview questions nine and ten, along with the recommended and actual answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions are general questions evaluating an applicant's general workplace skills and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining questions are not test items under section 552.122(b) and therefore may not be withheld on this basis. As you raise no other exceptions to disclosure, the remaining 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, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 356313

Enc. Submitted documents

c: Requestor
(w/o enclosures)