ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2009

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

OR2009-15030

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# 359567.

The Texas Department of Criminal Justice (the "department") received a request for the recent board questions and answers for the community squad officer position. 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.

Section 552.122 of the Government Code 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 seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122. You argue that release of this information would compromise the effectiveness of the department's interview and hiring process. You state the department uses the interview questions at issue on a continuing basis in the department's hiring process. Having considered your arguments and reviewed the

submitted information, we find that the submitted interview questions qualify as test items under section 552.122(b). We also find that release of the answers to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the submitted questions and actual and preferred answers under section 552.122(b). We find, however, that the remaining information, including the applicants' closing remarks, do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining information does not consist of test items under section 552.122(b) and therefore may not be withheld on that basis. As no further exceptions are raised for the remaining information, it 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,

Laura Ream Lemus

Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 359567

Enc. Submitted documents

c: Requestor
(w/o enclosures)