



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 1, 2010

Mr. Carey E. Smith  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2010-02935

Dear Mr. Smith:

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# 371467.

The Health and Human Services Commission (the "commission") received a request for a specified job posting, applications submitted by the interviewed applicants, interview and in-basket questions and exercises completed by all candidates including the requestor, interview panel notes for all interviews conducted including with the requestor, and the justification memo for the selected applicant. You state you will release a portion of the requested information 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.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. 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 answer might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the in-basket exercises and all interviewees' responses to these exercises under section 552.122 of the Government Code. You explain that the exercises are designed to evaluate an individual's knowledge or ability in a particular area. You inform us that the exercises are used on a continuing basis during the commission's hiring process. You state that the release of this information would compromise the effectiveness of future examinations. Having reviewed the submitted information and your arguments, we find the in-basket exercises are "test items" for purposes of section 552.122(b) and the interviewees' responses reveal the exercises themselves. We therefore conclude that the commission may withhold the information at issue under section 552.122 of the Government Code.

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](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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 371467

Enc. Submitted documents

c: Requestor  
(w/o enclosures)