ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2010

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

OR2010-03210

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# 374303.

The Texas Department of Criminal Justice (the "department") received a request for "the questions and answers for all applicants for job posting # 024427B1 Industrial Specialist IV Production Supervisor." You state some of the requested information has been or will be released 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) of the Government Code excepts from required public 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. 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

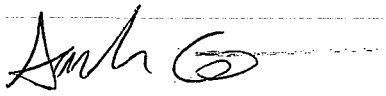
also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold the submitted interview questions, as well as the actual and recommended responses to those questions, under section 552.122 of the Government Code. You state the submitted 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. Having considered your arguments and reviewed the information at issue, we conclude question number one and question numbers three through six qualify as test items for the purposes of section 552.122(b). We also conclude that release of the recommended and actual answers to those questions would tend to reveal the questions themselves. Thus, the department may withhold this information under section 552.122(b). However, we find question number two consists of a general question evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test any specific knowledge of an applicant. Accordingly, question number two, as well as its recommended response and the actual responses, may not be withheld under section 552.122 of the Government Code. As you raise no further arguments against disclosure of the remaining information, it 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, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 374303

Enc. Submitted documents

c: Requestor
(w/o enclosures)