



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2010

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

OR2010-05711

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# 376567.

The Texas Health and Human Services Commission (the "commission") received two requests from different requestors for information pertaining to job posting numbers 137095 and 137140, with one requestor additionally seeking information pertaining to job posting number 140327.¹ You state that the commission has no responsive information relating to job posting number 137095.² You state the commission has released some of the requested information to the requestors. You claim that portions of the submitted information are

¹The commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.³

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.

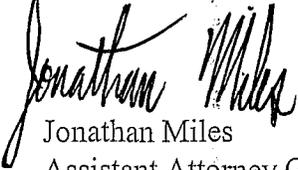
You raise section 552.122 of the Government Code for interview questions 1, 2, 3, 7, and 10 and the respective answers to these interview questions. You argue that release of these interview questions and answers would compromise the effectiveness of the commission's interview and hiring process. You state the commission uses these interview questions on a continuing basis during the commission's hiring process. Having considered your arguments and reviewed the submitted information, we find that interview questions 1, 2, 3, and 7 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 commission may withhold interview questions 1, 2, 3, and 7 and the respective answers to these interview questions under section 552.122(b) of the Government Code. We find, however, that interview question 10 merely evaluates the applicant's general workplace skills, subjective ability to respond to a particular situation, and overall suitability for employment, and does not test any specific knowledge of an applicant. Therefore, the commission may not withhold interview question 10 or the answer to interview question 10 pursuant to section 552.122 of the Government Code. As you raise no further exceptions, the remaining interview questions and their answers 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.

³We assume 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 (1987), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 376567

Enc. Submitted documents

c: Requestor
(w/o enclosures)