



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 10, 2010

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

OR2010-08500

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# 382047.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified job posting, including all interview documentation and the application for the selected applicant. You state you will release some 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.

Initially, we note that you have not submitted any information responsive to the portion of the request seeking the application for the selected applicant. Therefore, to the extent information responsive to this part of the request existed on the date the department received the request, we assume the department has released it to the requestor. If the department has not released any such information, the department must release it to the requestor at this time. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under the circumstances).

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 state the submitted interview questions are intended to display the technical expertise of the applicant and that the department prefers to use similar questions in future position selections. Further, you argue that release of the interview questions could compromise future interviews. Having reviewed the submitted information, we find questions 3, 6, and 7 evaluate the applicant's specific knowledge or ability in a particular area, thus qualifying as "test items" under section 552.122(b) of the Government Code. We also find that release of the recommended and actual answers to these test items would tend to reveal the questions themselves. Therefore, the department may withhold questions 3, 6, and 7, as well as their recommended and actual answers, pursuant to section 552.122(b) of the Government Code. However, we find the remaining interview questions and their recommended and actual answers, as well as the applicants' closing remarks, are general questions or statements evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, the remaining interview questions and their recommended and actual answers, as well as the applicants' closing remarks, are not excepted from disclosure under section 552.122 of the Government Code. As you raise no further exceptions to disclosure of this 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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/sdk

Ref: ID# 382047

Enc. Submitted documents

c: Requestor
(w/o enclosure)