



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2010

Ms. Connie Crawford
Assistant County Attorney
El Paso County Hospital District
8TH Floor, Suite B
4815 Alameda Avenue
El Paso, Texas 79905

OR2010-09529

Dear Ms. Crawford:

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# 384766 (El Paso County File No. HO-10-072).

The El Paso County Hospital District d/b/a University Medical Center of El Paso (the "district") received a request for six categories of information pertaining to the network supervisor and network specialist job positions.¹ You state that you have provided the requestor information responsive to Categories 1, 3, and 6 of the request with social security numbers and private e-mail addresses redacted.² You state that information responsive to

¹We note the requestor clarified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²This office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Additionally, Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Category 2 does not exist.³ 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 inform us the submitted information contains testing tools and behavioral questions designed to test and evaluate individual applicants' knowledge or ability in a specific areas. You further state that the release of the submitted information would compromise its usefulness in filling future job vacancies, hamper the district's ability to hire qualified applicants, and bias future applicant pools. Upon review, we find portions of the submitted information, which we have marked, either evaluate an applicant's specific knowledge or ability in a particular area or reveal the answers to the test questions themselves, thus qualifying as "test items" under section 552.122(b) of the Government Code. Accordingly, the district may withhold this information pursuant to section 552.122(b). However, we find the remaining information either does not contain test questions or consists of general questions that evaluate 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 information is not excepted from disclosure under section 552.122 of the Government Code. As you raise no further exceptions to disclosure of 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,

³We note 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 No. 452 at 3 (1986).

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 cursive script, appearing to read "James McGuire".

James McGuire
Assistant Attorney General
Open Records Division

JM/dls

Ref: ID# 384766

Enc. Submitted documents

c: Requestor
(w/o enclosures)