



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2010-12087

Dear Ms. Alexander:

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# 389964.

The Texas Department of Transportation (the "department") received a request for the documentation used in the selection process to qualify and score applicants for a specified position. 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 representative sample of information.¹

Initially, you state the department requested clarification from the requestor regarding whether he is seeking job applications. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). We understand the department had not yet received a response from the requestor as of the date you requested this decision. Accordingly, the department has no obligation at this time to release any information that might be responsive to this portion of the request. But if the department receives clarification and wishes to withhold any of the information encompassed by the clarified request, then you must request another decision

¹We assume that 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 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

from this office. *See id.* §§ 552.301, .302; *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Section 552.122 of the Government Code exempts from 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. *Id.* 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); Open Records Decision No. 626 at 8 (1994).

You contend that the submitted information is excepted from disclosure under section 552.122(b) of the Government Code. You argue that the release of this information might undermine the selection process and compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we find that the interview questions we have marked are test items under section 552.122(b). We also find that release of the preferred answers to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the questions we have marked, along with the preferred answers, pursuant to section 552.122(b). However, we find that the remaining questions are general questions 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. We also find the competencies scoring sheet, which you inform us is used to select applicants for interviews, is not a test item. 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, the remaining information 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,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 389964

Enc. Submitted documents

c: Requestor
(w/o enclosures)