



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2010

Ms. Kasey Feldman
Personnel Attorney
General Law Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

ATTORNEY GENERAL OF TEXAS

OR2010-13156

Dear Ms. Feldman:

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# 391804.

The Texas Commission on Environmental Quality (the "commission") received a request for seven categories of information related to Job Posting Number 10164/Geoscientist II. You state some responsive information has been made available 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 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 seek to withhold the submitted information under section 552.122. You state the submitted questions will be reused in future examinations. You argue that release of the information at issue would jeopardize the examination process of candidates for this position. Having considered your arguments and reviewed the information at issue, we conclude some of the submitted questions evaluate an applicant's specific knowledge or ability in a particular area and that the submitted answers to these questions reveal the test questions themselves. Thus, this information qualifies as test items for the purposes of section 552.122(b). Accordingly, we conclude that the commission may withhold technical questions one through eleven, as well as the preferred and actual answers to those questions, under section 552.122 of the Government Code. However, we find the remaining information consists of general questions and answers 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 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 391804

Enc. Submitted documents

c: Requestor
(w/o enclosures)