



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2011

Ms. Janet Smith
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2011-01783

Dear Ms. 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# 408883 (DSHS Open Records Request No. 18275).

The Texas Department of State Health Services (the "department") received a request for any records pertaining to the interviews for job posting #160625.¹ You state the department will release some information to the requestor. You claim 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 the submitted information pertaining to job posting # 160133 is not responsive to the instant request because it does not pertain to the specified job posting. The department need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.122 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 the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in

¹You indicate the department sought and received clarification from the requestor regarding the request. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). 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 information you have marked under section 552.122 of the Government Code. You explain the interview questions at issue are used to measure an interviewee’s skills, knowledge, intelligence, capacities, and aptitude to perform the tasks for a particular position. You argue the release of these questions would compromise the effectiveness of future examinations and limit the department’s ability to select the best qualified candidate in future interviews. You also state the department reuses the interview questions at issue. Having considered your arguments and reviewed the submitted information, we find the information you have marked evaluates 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 the release of the answers to these test items would tend to reveal the questions themselves. Therefore, the department may withhold this information under section 552.122(b).

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/eeg

Ref: ID# 408883

Enc. Submitted documents

c: Requestor
(w/o enclosures)