



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2011

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

OR2011-06182

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# 416475.

The Texas Department of Transportation (the "department") received a request for the following categories of information pertaining to job openings for Ferry Deck Supervisor, job requisition number 015409, and Ferry Boat Captain IV, job requisition number 009462: (1) interview questions and answers of the top three applicants, (2) preferred answers to those interview questions, and (3) scores, score sheets, and scoring guidelines of the top three applicants. You claim that most of 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 you have not submitted for our review any information responsive to the request for scores, score sheets, and scoring guidelines of the top three applicants for each job position. Although you state the department submitted a representative sample of information, no portion of the submitted representative sample pertains to scores, score sheets, or scoring guidelines of the top three applicants for each job position. Thus, we find the submitted information is not representative of the information sought in these parts of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records contain substantially

different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). To the extent information responsive to the remaining categories of requested information existed when the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 state the questions, actual answers, and preferred answers you have marked test the knowledge, abilities, and skills in specified areas that are required for the particular positions at issue. You also explain the department anticipates reusing the interview questions for future job vacancies and that advance knowledge of the questions, actual answers, and preferred answers would assist a future interviewee in obtaining a perfect score. Based on your representations and upon our review, we conclude interview question 5 is a test item under section 552.122(b) of the Government Code. We also find release of the submitted actual and preferred answers to question 5 would reveal the question itself. Therefore, the department may withhold interview question 5 and the actual and preferred answers to that question under section 552.122(b) of the Government Code. We find, however, the remaining interview question you have marked only evaluates an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test any specific knowledge of an applicant. Accordingly, we determine the remaining question you have marked does not constitute a test item under section 552.122(b). Thus, the department may not withhold the remaining information under section 552.122(b). As you have not claimed any other 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/bs

Ref: ID# 416475

Enc. Submitted documents

c: Requestor
(w/o enclosures)