



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 6, 2011

Ms. Charlotte A. Towe
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2011-07904

Dear Ms. Towe:

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# 422122.

The Texas Department of Criminal Justice (the "department") received a request for the questions, answers, notes, and other employment decision making documents for three specified positions. You state some of the information responsive to this request has been or will be made available to the requestor. You claim the remaining responsive information is excepted from disclosure under section 552.122 of the Texas Government Code. We have considered your argument 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, 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 a particular area is evaluated[.]" but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 (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. Attorney General Opinion No. JM-640 at 3 (1987); ORD 626 at 8.

You state the questions in the submitted information test the technical expertise of the applicant 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 model answers would assist a future applicant. Based on your representations and our review, we conclude the questions we have marked qualify as test items under section 552.122(b) of the Government Code. We also find release of the submitted actual and model answers to these questions would reveal the questions themselves. Therefore, the department may withhold the information we have marked under section 552.122(b) of the Government Code. We find, however, the remaining information only evaluates an applicant's individual abilities and personal opinions and does not test any specific knowledge of an applicant. 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV1/dls

Ref: ID# 422122

Enc. Submitted documents

c: Requestor
(w/o enclosures)