



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

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

OR2011-09657

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# 423050.

The Texas Department of Transportation (the "department") received a request for job applications, minimum qualifications and competency scoring, interview questions and rating criteria, interview responses and rating scores, final interview ranking list, candidate selection documentation, and reference checks pertaining to job requisition number 015686. 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.

Initially, we note you have only submitted information pertaining to interview questions and responses, rating criteria, and rating scores. You state the department submitted a representative sample of information; however, no portion of the submitted representative sample pertains to job applications, minimum qualifications and competency scoring, final interview ranking list, candidate selection documentation, or reference checks. Thus, we find the submitted information is not representative of the information sought in the remaining items 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 public). To the extent information responsive to the remaining items of the request existed on the date the department received the request for information, 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 the 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.

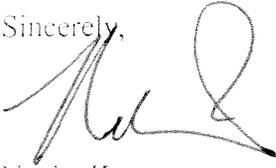
You seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122 of the Government Code. You state these questions evaluate an individual’s knowledge or ability in particular areas. You inform us the department anticipates using these questions in future interviews and argue that release of this information would compromise the effectiveness of future examinations. However, upon review of the submitted information, we find the submitted interview questions evaluate an applicant’s general workplace skills and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine the submitted questions, and their preferred and actual answers, are not test items under section 552.122(b) of the Government Code and therefore may not be withheld on this basis. As you raise no further arguments against disclosure of the submitted 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,

A handwritten signature in black ink, appearing to read 'Nneka Kanu', with a large loop at the end.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 423050

Enc. Submitted documents

cc: Requestor
(w/o enclosures)