



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2011

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

OR2011-11096

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# 425747.

The Texas Department of Transportation (the "department") received six requests from the same requestor for the reference check, screening documentation, interview notes, and job simulation test scores pertaining to the requestor's interview for specified job postings. You state you are releasing most of the requested information. 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.<sup>1</sup>

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.*

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore 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.

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 and job simulations, as well as the preferred and actual answers to those questions and performance criteria for the job simulations, under section 552.122 of the Government Code. You state these questions and simulations evaluate an individual's knowledge or ability in particular areas. You inform us the department anticipates using these questions and simulations in future interviews and argue that release of this information would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we conclude some of the interview questions, as well as the preferred and actual answers to these questions, job simulations, and performance criteria we have marked qualify as test items for the purposes of section 552.122(b). Accordingly, we conclude the department may withhold the marked questions, answers, job simulations, and performance criteria under section 552.122 of the Government Code. We find, however, the remaining questions, answers, and job simulations do not constitute test items. Accordingly, this information is not excepted from disclosure under section 552.122(b) 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](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 "Sarah Casterline", with a stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eb

Ref: ID# 425747

Enc. Submitted documents

c: Requestor  
(w/o enclosures)