



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 3, 2011

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

OR2011-11195

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# 426537.

The Texas Department of Transportation (the "department") received a request for specified interview questions, preferred answers, and actual responses and scored summaries of three interviewees. You state you are releasing some of the requested information. 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 representative sample of information.<sup>1</sup>

Section 552.122 of the Government Code excepts from 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 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); Open Records Decision No. 626 at 8 (1994).

You assert the submitted interview questions test the knowledge, skills, and abilities in a particular area. You state the department anticipates using these questions for future vacancies of this kind. You further state the preferred answers reveal the nature of the questions. Based on your representations and our review, we conclude interview questions three through five, seven through eleven, thirteen, and fourteen are "test items" under section 552.122(b) of the Government Code. Furthermore, we find release of the preferred answers to these questions would reveal the questions themselves. Therefore, the department may withhold interview questions three through five, seven through eleven, thirteen, and fourteen and the preferred answers to these questions pursuant to section 552.122(b) of the Government Code. However, we find interview question twelve 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, interview question twelve and its preferred answer may not be withheld from disclosure under section 552.122 of the Government Code. As you raise no other exceptions to disclosure, this 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/agn

Ref: ID# 426537

Enc. Submitted documents

c: Requestor  
(w/o enclosures)