ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2011

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

OR2011-13900

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# 431440.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's interview questionnaire responses for a specified position. You state some information has been or will be released to the requestor. 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 information.

Section 552.122 of the Government Code excepts from required 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.* 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 submitted interview questions and answers are "intended to display the technical expertise of the applicant" and the department prefers to use similar questions from

one position selection to the next. Further, you argue release of the information at issue could complicate the operation of the selection process, compromise future interviews, and decrease fairness and effectiveness in the selection process. Having considered your arguments and reviewed the submitted information, we conclude interview question 4 is a test item under section 552.122(b) of the Government Code. We also find release of the recommended and actual answer to question 4 would tend to reveal the question itself. Therefore, pursuant to section 552.122(b), the department may withhold the interview question 4, along with its corresponding recommended and actual answer. We find, however, the remaining interview questions and the closing remarks only evaluate an applicant's individual abilities and personal opinions and do not test any specific knowledge of an applicant. Accordingly, we determine the remaining information does not constitute a test item under section 552.122(b). As you have not raised any further 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,

Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 431440

Enc. Submitted documents

c: Requestor
(w/o enclosures)