



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 18, 2011

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

OR2011-15168

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# 433494.

The Texas Department of Transportation (the "department") received a request for interview questions and answers and all applications for Job Requisition 016137. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.

Initially, we note you have only submitted information pertaining to interview questions and the model answers. You state the department submitted a representative sample of information; however, no portion of the submitted representative sample pertains to job applications. Thus, we find the submitted information is not representative of the information sought regarding job applications. 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 request for job applications 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.

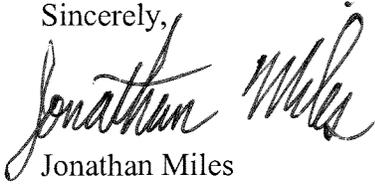
You seek to withhold the submitted interview questions, as well as the preferred answers to those questions, under section 552.122(b) of the Government Code. You claim these questions evaluate an individual’s knowledge or ability in particular areas. You inform us the department anticipates using these questions in future interviews and argue that release of this information would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we conclude the interview questions we have marked, as well as the preferred answers to these questions, qualify as test items for the purposes of section 552.122(b). Accordingly, we conclude the department may withhold the interview questions we have marked and the preferred answers to these questions under section 552.122(b) of the Government Code. We find, however, the remaining information consists of questions that evaluate an applicant’s general knowledge, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Thus, we determine the remaining questions are not test items under section 552.122(b) of the Government Code and, therefore, may not be withheld on this basis. Accordingly, 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,

A handwritten signature in black ink that reads "Jonathan Miles". The signature is written in a cursive style with a large, looped initial "J" and "M".

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 433494

Enc. Submitted documents

c: Requestor
(w/o enclosures)