



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 21, 2011

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

OR2011-17172

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# 436889.

The Texas Department of Transportation (the “department”) received a request for thirteen categories of information, including the interview questions and answers for a specified job posting.<sup>1</sup> You state some of the requested information either has been or will be released. 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>2</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

---

<sup>1</sup>We note the requestor modified his request. *See* Gov’t Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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. *Id.* 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 and preferred and actual answers to the questions under section 552.122. Having considered your arguments, we find some of the interview questions at issue qualify as test items under section 552.122(b). We also find the release of the preferred and actual answers to these questions would tend to reveal the questions themselves. We therefore conclude the department may withhold portions of the submitted information under section 552.122 of the Government Code. However, we find the remaining submitted interview questions are general questions evaluating 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 remaining submitted questions are not test items under section 552.122(b). Therefore, the department may not withhold the remaining interview questions and answers, which we have marked for release, under section 552.122 of the Government Code.

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,



Cynthia G. Tynan  
Assistant Attorney General  
Open Records Division

CGT/em

Ref: ID# 436889

Enc. Submitted documents

c: Requestor  
(w/o enclosures)