



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 27, 2012

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

OR2012-02907

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# 446566.

The Texas Department of Transportation (the “department”) received a request for “the application package with [the requestor’s] RANKING/SCORE, screening criteria, interview questions[,] and [the] preferred answers” for the requestor and selected applicants. You state the department is releasing some of the responsive 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.¹

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

¹We assume the “representative sample” of information 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 those submitted to this office.

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 “involve standards by which an individual’s stated knowledge or ability in a particular area is evaluated.” You also state “the questions relate to the stated knowledge, skills, and abilities required for the position and do not focus on qualifications or experience unique to a particular applicant.” Further, you state the department “anticipates using these interview questions for future job vacancies of this kind.” Having considered your arguments and reviewed the submitted information, we find that the interview questions we have marked qualify as test items under section 552.122(b) of the Government Code. We also find the release of the preferred and applicants’ responses to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the questions and the corresponding preferred and applicants’ responses that we have marked under section 552.122(b) of the Government Code. We find, however, that the remaining interview questions only evaluates an applicant’s individual abilities, personal opinions, and subjective ability to respond to particular situations, and does not test any specific knowledge of an applicant. Accordingly, we determine the remaining information does not consist of test items under section 552.122(b) and may not be withheld on that basis. As you have not claimed any 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, 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 446566

Enc. Submitted documents

c: Requestor
(w/o enclosures)