



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 9, 2012

Mr. Carey E. Smith  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2012-03619

Dear Mr. Smith:

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# 447995.

The Texas Health and Human Services Commission (the “commission”) received a request for the applications, interview notes, scores, and references for all persons who applied for three specified positions with the commission. You state most of the requested information will be released to the requestor. You claim some of 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 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. *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

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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.

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 some of the submitted interview questions and the interviewees' answers to the questions under section 552.122. You state the commission uses the interview questions at issue on a continuing basis. Having considered your arguments, we find the interview questions you have marked qualify as test items under section 552.122(b). We also find the release of the answers to these questions would tend to reveal the questions themselves. We therefore conclude the commission may withhold the information you have marked under section 552.122 of the Government Code. 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](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 cursive script, appearing to read "Kathryn R. Mattingly". The signature is written in dark ink and is positioned to the right of the typed name.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/dls

Ref: ID# 447995

Enc. Submitted documents

c: Requestor  
(w/o enclosures)