ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

Ms. Barbara H. Owens
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2012-13021

Dear Ms. Owens:

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# 462626 (DSHS File: 20371/2012).

The Texas Department of State Health Services (the "department") received a request for the interview questions for a specified position. 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 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).

You seek to withhold the submitted interview questions under section 552.122 of the Government Code. You assert the questions are factual questions that require specific knowledge, situational questions requiring an applicant to explain what steps are necessary

in a given situation, or behavior questions requiring an applicant to describe a specific action they took in a specific situation that relates to the "knowledge, skills, and abilities" of a particular position. You argue that release of the submitted questions would compromise the effectiveness of future examinations and limit the department's ability to select the best qualified candidate in future interviews. You also state the department reuses the interview questions at issue. Having considered your arguments and reviewed the submitted information, we find the questions numbered 2 and 6 evaluate an applicant's specific knowledge or ability in a particular area, thus qualifying as "test items" under section 552.122(b). Therefore, the department may withhold these questions under section 552.122(b). However, we find the remaining questions evaluate applicants' individual experience and subjective abilities to respond to particular situations and do not test any specific knowledge of an applicant. Consequently, the remaining questions are not excepted from disclosure under section 552.122 of the Government Code. As you raise no further exceptions against disclosure, the remaining questions 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,

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 462626

Enc. Submitted documents

c: Requestor
(w/o enclosures)