



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2012

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

OR2012-13056

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# 466834.

The Texas Department of Transportation (the "department") received a request for all the job simulation, candidates' interview questions, and scores for job vacancy number 017357, Transportation Engineer IV. You state some responsive information has been 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.¹

Initially, we note the department has submitted the job simulation, questions one and five, and the actual answers to questions one and five for review. The requestor seeks only the job simulation, and interview questions one and five. Thus, only that information is responsive to the request. This ruling does not address the public availability of the remaining non-responsive information, and the department need not release information that is not responsive to the request.

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

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 that those records contain substantially different types of information than that submitted to this office.

(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 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 job simulation, and questions one and five, under section 552.122. You state the information at issue “involve[s] standards by which an individual’s stated knowledge or ability in a particular area is evaluated.” You also state “[t]he questions and the job simulation 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 and the job simulation for future job vacancies of this kind.” Having considered your arguments, we find the job simulation and interview questions at issue qualify as test items under section 552.122(b). Therefore, the department may withhold questions one and five, as well as the job simulation, under section 552.122(b) 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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 466834

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**