



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 21, 2012

Mr. James Mu
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2012-13165

Dear Mr. James Mu:

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# 462780.

The Texas Department of Criminal Justice (the "department") received a request for copies of any department application form, interview notes, documents, forms, and test results for two specified positions. You state you will release some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.122 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. Open Records Decision No. 626 at 6 (1994). 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 state the submitted interview questions are “intended to display the technical expertise of the applicant” and the department prefers to use similar questions from one position selection to the next. Further, you argue release of the information at issue could compromise future interviews. Having considered your arguments and reviewed the submitted information, we find that interview questions 1, 3, 4, and 5 qualify as test items under section 552.122(b) of the Government Code. We also find the release of the model and actual answers to these questions would tend to reveal the questions themselves. Therefore, pursuant to section 552.122(b) of the Government Code, the department may withhold questions 1, 3, 4, and 5 along with the corresponding model and actual answers. We find, however, interview question 2 and its recommended and actual answer, as well as the applicants’ closing remarks, only evaluate each applicant’s individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, we determine question 2 and its recommended and actual answer, as well as the applicants’ closing remarks, do not constitute test items under section 552.122(b) and may not be withheld on that basis.

Section 552.134(a) of the Government Code encompasses information relating to inmates of the department and provides:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the [department] is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov’t Code § 552.134(a). Upon review, we agree the information you have marked concerns an individual confined as an inmate in a facility operated by the department. We find the exceptions in section 552.029 are not applicable in this instance. Therefore, the department must withhold the information you have marked under section 552.134(a) of the Government Code.

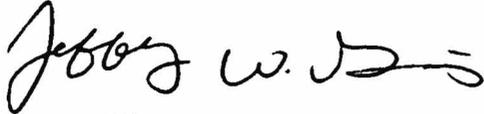
In summary, the department may withhold questions 1, 3, 4, and 5 along with the corresponding model and actual answers under section 552.122 of the Government Code. The department must withhold the information you have marked under section 552.134(a) of the Government Code. The remaining information 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,

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 black ink, appearing to read "Jeffrey W. Giles". The signature is written in a cursive style with a horizontal line at the end.

Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 462780

Enc. Submitted documents

c: Requestor
(w/o enclosures)