



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2012

Ms. Elisabeth D. Nelson  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2012-15965

Dear Ms. Nelson:

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# 467090.

The Garland Independent School District (the "district"), which you represent, received two requests from the same requestor for information pertaining to a job position. The first request sought score sheets used to evaluate "candidates/myself" and "model answers." The second request sought hand written notes in relation to the application process, documents relied upon by the district during the selection process, and all ranking documents for candidates who applied for the position. You state the district does not possess some of the information requested.<sup>1</sup> You also state the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code.<sup>2</sup> We have considered the exception you claim and

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<sup>1</sup>We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986).

<sup>2</sup>You inform us in your brief dated August 7, 2012, that the district has withdrawn its claim under section 552.101 of the Government Code.

reviewed the submitted representative sample of information.<sup>3</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you state the district asked the requestor for clarification of both requests. *See id.* § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request). You also state the requestor has not responded to either request for clarification; therefore, the district is not required to release any responsive information for which it sought clarification. However, if the requestor responds to the requests for clarification, the district must again seek a ruling from this office before withholding any additional responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

Section 552.122 of the Government Code exempts 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. *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); Open Records Decision No. 626 at 8.

You seek to withhold the questions and model answers provided to those questions in the submitted document under section 552.122 of the Government Code. You state the questions are designed to evaluate an individual’s knowledge or ability in a particular area. You state the release of this information would hinder the district’s ability to effectively select future candidates for the position at issue. Having considered your arguments and reviewed the information at issue, we find interview question numbers 3, 6, and 7 are “test items” under section 552.122(b). We also find the model answers to these questions would tend to reveal the questions. Therefore, the district may withhold question numbers 3, 6,

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<sup>3</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 those submitted to this office.

and 7, as well as the answers to these questions, under section 552.122(b). We find, however, the remaining interview questions are general questions evaluating an applicant's general workplace skills and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine the remaining questions are not test items under section 552.122(b). Therefore, the remaining questions and their model answers may not be withheld under section 552.122(b). As you raise no other exceptions against the release of the remaining information, it 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 467090

Enc. Submitted documents

c: Requestor  
(w/o enclosures)