



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2012

Ms. Patricia Fleming
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2012-16849

Dear Ms. Fleming:

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# 468468.

The Texas Department of Criminal Justice (the "department") received a request for job applications and interviewer questions and responses of the selected applicant, any subsequent selection, and the requestor for two specified positions. You state some information has been or will be made available to the requestor. You claim that 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.

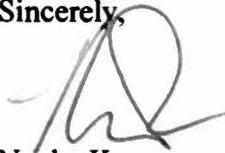
Section 552.122 of the Government Code excepts from disclosure "[a] test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes "any standard means by which an individual's 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 submitted information under section 552.122 of the Government Code. You state the 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 information at issue, we find the interview question and answers we have marked qualify as test items under section 552.122(b) of the Government Code and may be withheld on this basis. We find, however, the remaining information at issue evaluates each applicant’s general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of the applicants. Accordingly, we determine that the remaining information at issue does not constitute test items under section 552.122(b). Therefore, the department may not withhold the remaining information at issue 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 468468

Enc. Submitted documents

c: Requestor
(w/o enclosures)