



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2012

Ms. Danielle R. Folsom
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2012-17514

Dear Ms. Folsom:

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# 469770 (GC No. 19937).

The City of Houston (the "city") received a request for information pertaining to the position(s) for which a named individual has applied since a specified date, including applications, job descriptions, reasons he was not hired, and pre-employment physical examinations. You state some of the requested information either has been or will be released. You also state the city has no responsive records of pre-employment physical examinations.¹ 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 information you submitted.

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. *Id.* at 6. The question of whether specific information falls within the scope

¹We 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

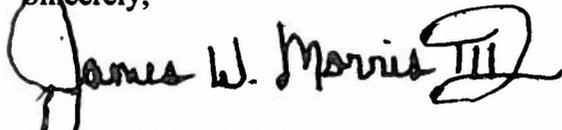
of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects 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 explain the submitted information consists of interview questions and answers and interviewers' scaled responses to the answers. You state the interview questions are used to measure the potential employee's knowledge and ability regarding the job for which the individual is applying. You inform us the city's solid waste management department intends to re-use these questions. You contend the release of the submitted information would diminish the effectiveness of future examinations by giving an advantage to individuals who are already in possession of the interview questions and answers. Based on your representations and our review, we find questions two, three, and seven qualify as test items for purposes of section 552.122(b). We also find the release of the answers to those questions would tend to reveal the questions themselves. We therefore conclude the city may withhold questions two, three, and seven and the answers to those questions, which we have marked, under section 552.122 of the Government Code. We find the remaining questions are of a more general nature and tend to solicit opinion, general knowledge, or information that is not sufficiently specific to any particular position. We therefore conclude the city may not withhold any of the remaining information under section 552.122. Thus, as you claim no other exception to disclosure, 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 469770

Enc: Submitted documents

c: Requestor
(w/o enclosures)