



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 6, 2012

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

OR2012-19667

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# 474077.

The Texas Department of Criminal Justice (the "department") received a request for five categories of information pertaining to seven specified positions. You inform us the department does not have some of the requested information.<sup>1</sup> You also inform us the department has released or will release some of the requested information. 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 reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.122 of the Government Code excepts from disclosure "[a] test item developed by a . . . governmental body[.]" *Id.* § 552.122(b). In Open Records Decision No. 626 (1994),

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>You state you withdraw your assertion of sections 552.101, 552.102, 552.103, 552.104, 552.107, 552.108, 552.110, 552.111, 552.116, 552.130, and 552.137 of the Government Code. Further, although you initially raised section 552.134 and 552.136 of the Government Code, you have provided no arguments regarding the applicability of these sections to the submitted information. Accordingly, we assume you have withdrawn your assertion of sections 552.134 and 552.136. *See* Gov't Code §§ 552.301, .302.

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. ORD 626 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 submitted information could compromise future interviews. Having considered your arguments and reviewed this information, we find the interview questions 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 evaluates each applicant's general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and does not test any specific knowledge of the applicants. Accordingly, we determine this information does not constitute test items under section 552.122(b). Therefore, the department may not withhold the remaining information on this basis and 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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 474077

Enc. Submitted documents

c: Requestor  
(w/o enclosures)