



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2013

Ms. Mary Salluce
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2013-01318

Dear Ms. Salluce:

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# 477289 (DSHS OR File: 20993/2012).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified job posting. 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 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 assert the interview questions are factual questions that require specific knowledge, situational questions requiring an applicant to explain what steps are necessary in a given situation, or behavior questions requiring an applicant to describe a specific action they took in a specific situation that relates to the "knowledge, skills, and abilities" of a particular position. You argue that release of the submitted information would compromise the effectiveness of future examinations and limit the department's ability to select the best qualified candidate in future interviews. You also state the department reuses the interview questions at issue. Upon review, however, we find the questions at issue evaluate applicants' individual experience and subjective abilities to respond to particular situations and do not test any specific knowledge of an applicant. Consequently, the submitted information is not excepted from disclosure under section 552.122 of the Government Code. As you raise no further exceptions against disclosure, the submitted 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 "Sarah Casterline", with a long horizontal line extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 477289

Enc. Submitted documents

c: Requestor
(w/o enclosures)