



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 28, 2013

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services Commission
Mail Code 1070
P.O. Box 13247
Austin, Texas 78711

OR2013-11050

Dear Mr. Smith:

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# 491833.

The Texas Health and Human Services Commission (the "commission") received a request for information regarding the filling of a particular job opening at the commission. You state the commission will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.122 of the Government Code excepts from public 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.*

¹We 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 that submitted to this office.

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).

You assert the information you have marked is excepted from disclosure under section 552.122 of the Government Code. You state the commission uses these interview questions on a continuing basis during the commission's hiring process. Based on your representations and our review, we conclude the information we have marked qualifies as "test items" under section 552.122(b). Therefore, the commission may withhold the question we have marked under section 552.122(b). However, you have failed to demonstrate the remaining information you have marked qualifies as "test items" under section 552.122(b) of the Government Code. Thus, the commission may not withhold the remaining information you have marked on that basis. As you raise no further 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 491833

Enc. Submitted documents

c: Requestor
(w/o enclosures)