



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 8, 2014

Mr. Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2014-00529

Dear Ms. Smith and Mr. Aragón:

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# 510509.

The Health and Human Services Commission (the "commission") received a request for all documents pertaining to the positions for which the requestor has applied and not been selected, and any records that have been placed in the requestor's personnel file by a supervisor during a specified time period. You inform us you will release some of the requested information to the requestor. 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 submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-10654 (2012). In Open Records Letter No. 2012-10654, we determined the commission may withhold portions of the information at issue pursuant to section 552.122 of the Government Code, and must release the remaining information at issue. We have no

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<sup>1</sup>We 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.

indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, to the extent the submitted information was previously submitted to and ruled upon by this office, we conclude the commission may rely on Open Records Letter No. 2012-10654 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not previously submitted to and ruled upon by this office, we will address your argument against disclosure.

Section 552.122 of the Government Code exempts 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. 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.

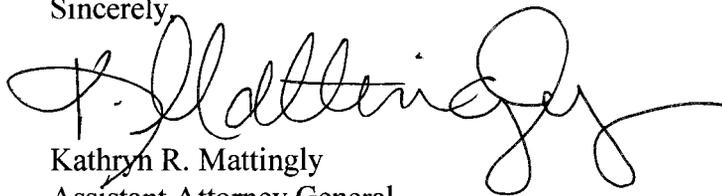
You seek to withhold some of the submitted interview questions and the interviewees’ answers to the questions under section 552.122. You state the commission uses the interview questions at issue on a continuing basis during the commission’s hiring process. Having considered your arguments, we find the interview questions we have marked qualify as test items under section 552.122(b). We also find the release of the answers to these questions would tend to reveal the questions themselves. Therefore, the commission may withhold the information we have marked under section 552.122 of the Government Code. However, you have failed to demonstrate any of the remaining information qualifies as a “test item” under section 552.122(b) of the Government Code. Thus, the commission may not withhold the remaining information on that basis.

In summary, to the extent the submitted information was previously submitted to and ruled upon by this office, the commission may rely on Open Records Letter No. 2012-10654 as a previous determination and withhold or release the identical information in accordance with that ruling. The commission may withhold the information we have marked under section 552.122 of the Government Code. The commission must release the remaining information.

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](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

A handwritten signature in black ink, appearing to read 'K. Mattingly', written in a cursive style.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 510509

Enc. Submitted documents

c: Requestor  
(w/o enclosures)