



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 14, 2014

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

OR2014-00808

Dear 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# 511021.

The Texas Health and Human Services Commission (the "commission") received a request for all information pertaining to interviews for a specified job posting, including skills, assessments, scoring, reference checks, and comments on all interviewees. 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>

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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.

Section 552.122(b) 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 interview questions, test exercises, and the applicants’ answers under section 552.122 of the Government Code. You assert these questions and exercises test the knowledge and abilities of applicants in a particular area. You state the commission uses these questions and exercises on a continuing basis during its hiring process. Further, you state the release of the submitted information would compromise the effectiveness of the commission’s interview and hiring process. Having considered your arguments and reviewed the submitted information, we find the interview questions and test exercises, which we have marked, evaluate an applicant’s specific knowledge or ability in a particular area and, thus, qualify as “test items” under section 552.122(b) of the Government Code. We also find the release of the applicants’ responses to these questions and test exercises would tend to reveal the questions and exercises themselves. Therefore, the commission may withhold the information we have marked under section 552.122(b) of the Government Code. We find, however, the remaining interview questions only evaluate an applicant’s individual abilities, personal opinions, and subjective ability to respond to particular situations and do not test any specific knowledge of an applicant. Accordingly, we conclude the remaining interview questions, as well as the responses to these questions, are not test items under section 552.122(b) and therefore may not be withheld on this basis. As no further exceptions to disclosure are raised for the remaining information, the commission must release it.

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 cursive script that reads "Lana L. Freeman".

Lana L. Freeman  
Assistant Attorney General  
Open Records Division

LLF/dls

Ref: ID# 511021

Enc. Submitted documents

c: Requestor  
(w/o enclosures)