



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 15, 2014

Ms. Sharon Alexander
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2014-00918

Dear Ms. Alexander:

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# 511499.

The Texas Department of Transportation (the "department") received a request for: (1) a list of applicants for a specified job vacancy; (2) the applications of applicants who were interviewed; (3) interview questions and the applicants' answers; and (4) a ranking of the interviewed applicants. 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.

Initially, we note you have only submitted one interview question and three applicants' answers to that question. Although you state the department has submitted a representative sample of the requested information, we find the submitted information is not representative of all the types of information to which the requestor seeks access. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the department to withhold any information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any such information existed on the date the department received the request, we assume the department has released it. If the department has not released any such information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

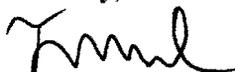
Section 552.122 of the Government Code exempts from disclosure “[a] test item developed by a . . . governmental body[.]” Gov’t Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” Open Records Decision No. 626 at 6. The term “test item” does not encompass evaluations of an employee’s overall job performance or suitability. *See id.* at 8. 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.* at 6. 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); Open Records Decision No. 626 at 8.

You state the question at issue involves standards by which an individual’s stated knowledge or ability in a particular area is evaluated and does not focus on qualifications or experience unique to a particular applicant. You further state the department anticipates using this interview question for future job vacancies and contend that advance knowledge of the question and preferred answer would guarantee a perfect score. Having considered your arguments and reviewed the submitted information, we find the interview question at issue qualifies as a test item under section 552.122(b) of the Government Code. We also find the release of the candidates’ answers to this question would tend to reveal the question itself. Accordingly, the department may withhold the information at issue pursuant to section 552.122(b) of the Government Code.

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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 511499

Enc. Submitted documents

c: Requestor
(w/o enclosures)