



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2014

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

OR2014-11885

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# 530520.

The Texas Health and Human Services Commission (the "commission") received a request for information relating to a specified job posting, including the applicants' job applications, their test answers, and the interviewers' notes.<sup>1</sup> You state some information was released to the requestor. 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 information.

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

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<sup>1</sup>We note the commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(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 applicants' answers to specified test questions under section 552.122 of the Government Code. You assert these questions test the knowledge and abilities of applicants in a particular area. You state the commission uses these questions on a continuing basis during its hiring process. Further, you state the release of the information at issue would compromise the effectiveness of the commission's interview and hiring process. Having considered your arguments and reviewed the information at issue, we find the interview questions at issue 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 would tend to reveal the questions themselves. Therefore, pursuant to section 552.122(b) of the Government Code, the commission may withhold the applicants' responses at issue. As you raise no arguments against disclosure for the remaining information, it 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](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,

  
Lauren Dahlstein  
Assistant Attorney General  
Open Records Division

LMD/eb

Ref: ID# 530520

Enc. Submitted documents

c: Requestor  
(w/o enclosures)