



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 26, 2016

Mr. Jonathan Miles  
Open Government Attorney  
Texas Health and Human Services Commission  
P. O. Box 13247  
Austin, Texas 78711

OR2016-04682

Dear Mr. Miles:

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# 605784.

The Texas Health and Human Services Commission (the "commission") received a request for records pertaining to a specified job openings. You state you are releasing some of the requested information. 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 information.

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.* 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 contend the submitted interview questions are excepted from disclosure under section 552.122(b) of the Government Code. You state release of this information could compromise future interviews by giving future applicants an unfair advantage. Upon review, we find question number ten evaluates an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test the specific knowledge of an applicant. Accordingly, question number ten does not consist of a test item under section 552.122(b), and the commission may not withhold it on that basis. However, we agree the remaining information qualifies as test items under section 552.122(b). We also find that release of the applicants' answers to the questions would tend to reveal the test items themselves. Therefore, with the exception of question number ten, which must be released, the commission 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](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,



Jesse Harvey  
Assistant Attorney General  
Open Records Division

JH/eb

Ref: ID# 605784

Enc. Submitted documents

c: Requestor  
(w/o enclosures)