



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2016

Ms. Stacy Spann
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2016-21861

Dear Ms. Spann:

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# 628142.

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified job posting, including all interview documentation, a specified application, and a specified rating sheet. 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 state the questions at issue "are intended to display the technical expertise of the applicant." You contend release of the questions at issue would be detrimental to the

department as these questions are reused during the interview stage of the selection process for this position. Based on your representations and our review, we conclude some of the submitted questions qualify as “test items” under section 552.122(b) of the Government Code. We also find release of the model answers to these questions and some of the interviewees’ responses to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the information we have marked under section 552.122(b) of the Government Code. However, we find the remaining information only evaluates an individual’s experience, personal opinions, and subjective ability to respond to particular situations and does not test any specific knowledge of the applicant. Accordingly, we find the remaining information does not consist of test items under section 552.122(b) of the Government Code and may not be withheld on that basis. As no other exceptions to disclosure have been raised, the department 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, 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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 628142

Enc. Submitted documents

c: Requestor
(w/o enclosures)