



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2016

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

OR2016-21988

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# 628551 (Reference No. 11409).

The Texas Health and Human Services Commission (the "commission") received a request for all documents in the requestor's employment file during a specified time period. You state the commission has released some information to the requestor. 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.¹

Section 552.122 of the Government Code excepts from disclosure "[a] test item developed by a . . . governmental body[.]" Gov't Code § 522.122(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." ORD 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

¹ We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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).

You seek to withhold the submitted interview questions and interviewee responses under section 552.122 of the Government Code. You assert the questions at issue are a standard means by which an individual's or group's knowledge or ability in a particular area are evaluated. You state the commission intends to use the questions at issue on a continuing basis during its hiring process. Further, you state release of the submitted questions and interviewee responses would compromise the effectiveness of the commission's interview and hiring process. Based on your representations and our review, we agree some of the questions at issue qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions themselves. We find, however, 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, which we have marked for release, does not consist of a test item under section 552.122(b), and the commission may not withhold it or the corresponding answer on that basis. However, we agree the remaining information qualifies as test items under section 552.122(b). Thus, with the exception of question number ten and the corresponding answer, which must be released, the commission may withhold the submitted information 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/akg

Ref: ID# 628551

Enc. Submitted documents

c: Requestor
(w/o enclosures)