



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Ms. Eileen C. Begle
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR95-1299

Dear Ms. Begle:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36306.

The Harris County Sheriff's Department (the "county") has received a request for a copy of a videotape of an oral promotional examination that was given to an employee of the county. You have submitted to our office a copy of the videotape and a transcript of the tape and assert that this information is excepted from required public disclosure by section 552.122 of the Government Code.

Section 552.122 excepts:

- (a) A test item developed by an educational institution that is funded wholly or in part by state revenue
- (b) A test item developed by a licensing agency or governmental body¹

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 (1994) at 6. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*

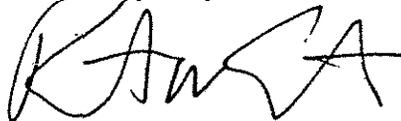
¹Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 10, 1995 Tex. Sess. Law Serv. 5127, 5132-33 (Vernon).

We have examined the information that you contend is excepted from disclosure under section 552.122. We conclude that the majority of the videotape and the transcript consists of questions that test an individual's knowledge or ability, and the answers given to these questions. This information may therefore be withheld from disclosure as test items under section 552.122. Open Records Decision No. 626 (1994), *see also* Attorney General Opinion JM-640 (1978) at 3 (answers to question may be excepted from disclosure if answers reveal questions). The final two questions asked during the examination, however, do not fall within this exception because they are not standard means to test an individual's knowledge or ability, but rather are general, subjective questions for the purpose of general employment evaluation. Additionally, you have not provided us with sufficient information to prove that this information is an objective test of knowledge or ability. We have marked the portion of the transcript that may be withheld under section 552.122. The corresponding information contained on the videotape may also be withheld under this exception. The final two questions and answers contained in both the transcript and on the videotape may not be withheld from disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301² regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 36306

Enclosures: Marked document
Video tape

cc: Mr. Steven L. Carnes
CLEAT
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(w/o enclosures)

²*Id.* § 18, 1995 Tex. Sess. Law Serv. at 5139 (Vernon).