ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2006

Mr. Hemant Makan
Executive Director
Texas State Board of Podiatric Medical Examiners
P.O. Box 12216
Austin, Texas 78711-2216

OR2006-11692

Dear Mr. Makan:

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# 261322.

The Texas State Board of Podiatric Medical Examiners (the "board") received a request for five categories of information regarding interviewees for a specified position.[1] You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.122 and 552.130 of the Government Code. We have considered the exceptions 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 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," but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). The question of whether specific information falls within the scope of section 552.122(b) must be determined

[1] You inform us that the requestor has agreed to narrow her request to exclude a Texas Department of Public Safety document that was attached to each questionnaire. *See* Gov't Code § 552.222 (governmental body may ask requestor to clarify or narrow scope of request). Therefore, we do not address its availability in this ruling.

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); Open Records Decision No. 626 at 8 (1994).

You seek to withhold the submitted interview questions, as well as the preferred and actual answers to those questions, under section 552.122. After reviewing the submitted information, we find that some of the submitted information tests an individual's knowledge in a particular area and thus constitutes "test items" as contemplated by section 552.122(b). We also find that the release of the model and actual answers to these questions would tend to reveal the questions themselves. Accordingly, we conclude that the board may withhold the interview questions, which we have marked, along with their corresponding preferred and actual answers, under section 552.122(b) of the Government Code. We find, however, that the remaining questions are general questions evaluating an applicant's general workplace skills and overall suitability for employment and do not test any specific knowledge of an applicant. Therefore, the remainder of the questions and their corresponding preferred and actual answers do not qualify as test items and may not be withheld under section 552.122(b).

Accordingly, the board may withhold the marked questions and their corresponding answers under section 552.122 of the Government Code. The remaining submitted information must be released to the requestor.[2]

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

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[2] As our ruling is dispositive, we need not address your remaining arguments against disclosure.

statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/sdk

Ref: ID# 261322

Enc. Submitted documents

c: Ms. Kathleen Davies
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(w/o enclosures)