



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2007

Ms. Elizabeth West
Personnel Attorney
General Law Division
Texas Commission on Environmental Equality
P. O. Box 13087
Austin, Texas 78711-3087

OR2007-02626

Dear Ms. West:

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# 272980.

The Texas Commission on Environmental Quality (the "commission") received a request for "the questions and expected answers" pertaining to a specified job posting. You state that some of the responsive information will be released to the requestor. However, you claim that the remaining 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.

Initially, we note that some of the submitted information is not responsive to the present request, which seeks only questions and expected answers pertaining to a specified job posting. The documents we have marked are neither questions nor answers pertaining to the specified job posting and are thus not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the commission is not required to release that information in response to the request.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or 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. Whether information falls within the section 552.122 exception

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

The commission claims that the submitted questions and answers are test items because “the anticipated answer reflects that specific knowledge is required by the applicants hired for this position.” The commission further states that the information at issue “will be reused for future examinations.” Having considered your arguments and reviewed the submitted information, we find that the questions we have marked qualify as test items under section 552.122(b) of the Government Code. We also find that the release of the model answers to these questions would tend to reveal the questions themselves. Therefore, the commission may withhold the information we have marked, along with the corresponding model answers, pursuant to section 552.122(b) of the Government Code. However, we find that the remaining interview questions are general questions evaluating applicants’ individual abilities, personal opinions, and subjective ability to respond to a particular situation, and do not test any specific knowledge of an applicant. Accordingly, the remaining interview questions, as well as the model answers to those questions, may not be withheld from disclosure under section 552.122 of the Government Code. As no further exceptions to disclosure are raised, the remaining interview questions and corresponding model answers must be released.

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 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 272980

Enc. Submitted documents

c: Ms. Sheila Hoffpauir
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(w/o enclosures)