



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2007

Ms. Margo M. Kaiser  
Staff Attorney  
Open Records Division  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2007-14960

Dear Ms. Kaiser:

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# 294932.

The Texas Workforce Commission (the "commission") received a request for information 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 requested 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.<sup>1</sup>

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

---

<sup>1</sup>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.

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); ORD 626 at 8.

You seek to withhold the submitted interview questions, as well as the answers to those questions, under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that interview questions seven through eleven qualify as test items for the purposes of section 552.122(b). We also conclude that the release of the answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that the commission may withhold interview questions seven through eleven, along with the answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions, the written exercise, and the oral communication skills section are general questions and exercises evaluating an applicant's general workplace skills and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining interview questions, the written exercise, and the oral communication skills section are not test items under section 552.122(b) and therefore may not be withheld on this basis. As you raise no other exceptions for this information, it 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,



Chanita Chantaplin-McLelland  
Assistant Attorney General  
Open Records Division

CC/jb

Ref: ID# 294932

Enc. Submitted documents

cc: Mr. William Rhodes  
3024 Gabriel View  
Georgetown, Texas 78628  
(w/o enclosures)