



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2007

Ms. Carey E. Smith  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2007-17019

Dear Ms. Smith:

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# 301874.

The Texas Health and Human Services Commission (the "commission") received a request for information regarding the requestor's employment at the commission, including test questions and answers for a specific job within the commission. You state that you are providing the requestor with a portion of the requested information. You claim that 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 information.

Section 552.122 excepts from disclosure "a test item developed by a . . . governmental body." Gov't Code § 522.122(b). The term, "test item," 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 evaluation 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 on a case-by-case basis. *Id.* This office applies section 522.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decisions 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).

The commission states that the submitted material is used on a continuing basis during the hiring process and release would compromise the effectiveness of the commission's

interview and hiring process. Based upon your arguments and our review, we find that the submitted questions test an individual's knowledge in a particular area, and therefore constitute "test items" as contemplated by section 552.122(b). Furthermore, we find that the submitted answers to the questions would reveal the questions themselves. Therefore, pursuant to section 552.122 of the Government Code, the department may withhold the submitted questions and answers.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,

A handwritten signature in black ink, appearing to read "Chris Schulz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/jb

Ref: ID# 301874

Enc. Submitted documents

c: Ms. Gail Morris-Caughey  
1009 East 45<sup>th</sup> Street  
Austin, Texas 78751  
(w/o enclosures)