



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 25, 2009

Mr. David Timberger  
Staff Attorney  
General Law Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711

OR2009-08800

Dear Mr. Timberger:

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# 346966.

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to a specified job posting. You state you have released some of the requested information. You claim that some of 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(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. 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. Open Records Decision No. 626 at 6 (1994). 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 assert that interview questions nine and ten and their responses are subject to section 552.122. You state that these questions and their corresponding answers "are technical-based" and that they "measure specific experience in areas necessary for the proper performance of the functions of the position." Upon review of the submitted information, we agree that questions nine and ten evaluate the applicants' specific knowledge or ability in a particular area. We also find that both the model and interviewee answers to these questions would reveal the questions themselves. Therefore, you may withhold these questions, and their corresponding answers, under section 552.122(b).

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 346966

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)