



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 29, 2009

Ms. Charlotte A. Towe
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-08939

Dear Ms. Towe:

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# 347437.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specified job posting. You claim that the requested information is exempted 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 the department has not submitted information responsive to the portion of the request seeking justification as to why a named candidate was selected. To the extent that such information exists, we presume that the department has released it. If not, the department must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (stating that governing body must produce public information promptly).

Section 552.122 of the Government Code exempts 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

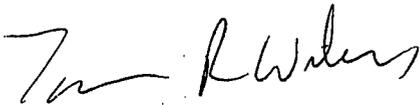
or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *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 preferred and actual answers to those questions, under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that interview question two qualifies as a test item for the purposes of section 552.122(b). We also conclude that release of the recommended and actual answers to this question would tend to reveal the question itself. Accordingly, we conclude that the department may withhold interview question two, along with the recommended and actual answers thereto, under section 552.122 of the Government Code. We find, however, that the remaining interview questions and the applicants' closing remarks 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. Accordingly, we determine that the remaining questions and the applicants' closing remarks are not test items under section 552.122(b) and therefore may not be withheld on this basis. As you raise no further exceptions to disclosure, the remaining information must be released.

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, 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 347437

Enc. Submitted documents

c: Requestor
(w/o enclosures)