



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 1, 2009

Mr. David Timberger  
Personnel Attorney  
General Law Division  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2009-13830

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# 356947.

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining the requestor's candidacy for five specified job postings. 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 of the Government Code excepts 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 argue that release of the interview questions and actual answers you have marked would compromise the effectiveness of the commission's interview and hiring process. You state the commission uses the interview questions you have marked on a continuing basis during the commission's hiring process. Having considered your arguments and reviewed the submitted information, we find that the interview questions you have marked qualify as test items under section 552.122(b). We also find that release of the answers to these questions, which you have also marked, would tend to reveal the questions themselves. Therefore, the commission may withhold the information you have marked under section 552.122(b). 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](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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/dls

Ref: ID# 356947

Enc. Submitted documents

c: Requestor  
(w/o enclosures)