



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 8, 2009

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

OR2009-14193

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# 357757.

The Texas Department of Criminal Justice (the "department") received a request for information regarding the selection of a candidate for the position of Lieutenant of Correction Officers at the Ferguson Unit, including the application of the successful applicant, interview questions, the answers given to the interview questions by the requestor and successful applicant, and model answers of the interview questions. You indicate you have released, or will soon release, some of the responsive information. You claim 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. 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. 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). This office has generally found section 552.122 to apply in cases where release of "test

items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* ORD 626 at 8.

You contend the submitted interview questions, as well as the model and actual answers to these questions, are excepted from disclosure under section 552.122(b) of the Government Code. You argue release of these test items would be disadvantageous to the selection process and would jeopardize the effectiveness of future examinations. Having considered your arguments and reviewed the submitted information, we find interview questions four and five qualify as test items under section 552.122(b). We also find release of the model and actual answers to these questions would tend to reveal the questions themselves. Therefore, the department may withhold questions four and five, along with the model and actual answers, pursuant to section 552.122(b) of the Government Code. However, we find that questions one, two, three, and six, as well as the “applicant’s closing remarks,” are general statements evaluating an applicant’s individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, questions one, two, three and six, and the “applicant’s closing remarks” are not excepted from disclosure under section 552.122 of the Government Code and 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, toll free, at (888) 672-6787.

Sincerely,



Karen E. Stack
Assistant Attorney General
Open Records Division

KES/cc

Ref: ID# 357757

Enc. Submitted documents

c: Requestor
(w/o enclosures)