



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2009

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

OR2009-14492

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# 358240.

The Texas Department of Criminal Justice (the "department") received a request for four categories of information pertaining to a specified job posting. 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.

Initially, we note that you have only submitted information responsive to a portion of the request. To the extent any other information responsive to the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 seek to withhold the submitted interview questions, as well as the recommended and actual answers to those questions, and a document relating to an applicant's job related experience under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that interview question number two qualifies as a test item for the purposes of section 552.122(b). Accordingly, the department may withhold interview question number two, along with the recommended and actual responses to this question, under section 552.122 of the Government Code. We find, however, that the remaining interview questions are general questions and statements evaluating the applicants' general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the remaining interview questions, the document relating to an applicant's job related experience, and applicants' closing remarks are not test items under section 552.122(b), and the department may not withhold this information under section 552.122 of the Government Code. As you raise no other exceptions against the disclosure of the remaining submitted information, it 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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 358240

Enc. Submitted documents

cc: Requestor
(w/o enclosures)