



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2009

Ms. Charlotte Towe
Assistant General Counsel
TDCJ - Office of the General Counsel
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2009-15765

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# 361460.

The Texas Department of Criminal Justice (the "department") received a request for the questions and correct answers for the last two sergeant position boards and the last two lieutenant position boards for offender transportation located at the Byrd Unit. You state that the department has released some information to the requestor. 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 the instant request is for the questions and correct answers only. Accordingly, any additional information, including the applicants' responses and closing remarks, are not responsive. This ruling does not address the public availability of any information that is not responsive to the request, and the department is not required to release this information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed).

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *See 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. *See Open Records Decision No. 626 at 6*. 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

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.

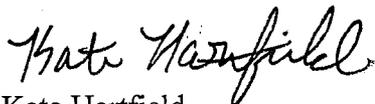
You state that the submitted interview questions are "intended to display the technical expertise of the applicant" and that the department prefers to use similar questions from one position selection to the next. Further, you argue that release of the information at issue could compromise future interviews. You seek to withhold the submitted interview questions, as well as the model answers to those questions, under section 552.122. Having considered your arguments and reviewed the submitted information, we conclude that the interview questions we have marked qualify as test items for the purposes of section 552.122(b). We also find that release of the model answers to these test items would tend to reveal the questions themselves. We find, however, that the remaining questions are general questions evaluating applicants' individual abilities, personal opinions, and subjective ability to respond to a particular situation, and do not test any specific knowledge of an applicant. Therefore, we determine that the remaining questions are not test items under section 552.122(b); these questions and their model answers may not be withheld on this basis.

Accordingly, the department may withhold the interview questions we have marked, along with their recommended answers, under section 552.122(b) of the Government Code. The remaining questions and model answers must be released to the requestor.

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/eeg

Ref: ID# 361460

Enc. Submitted documents

c: Requestor
(w/o enclosures)