



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2009

Mr. Carey E. Smith
General Counsel
Texas Health and Human Services
P.O. Box 13247
Austin, Texas 78711

OR2009-16389

Dear Mr. Smith:

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# 361977.

The Texas Health and Human Services Commission (the "commission") received a request for 1) interview notes pertaining to the requestor and each applicant interviewed for three specified postings, 2) the qualifications and application of each applicant, and 3) the related "hiring matrices." You state you will release most of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

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

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 submitted interview questions and actual answers, which you have marked, would compromise the effectiveness of the commission's interview and hiring process. You state the commission uses the marked interview questions on a continuing basis during the commission's hiring process. Having considered your arguments and reviewed the submitted information, we find that most of the interview questions qualify as test items under section 552.122(b). We also find that release of the answers to these interview questions would tend to reveal the questions themselves. Accordingly, we conclude the commission may withhold the interview questions we have marked, along with the responses to these questions, under section 552.122 of the Government Code. However, the remaining information does not test any specific knowledge of an applicant. Thus, we determine the information at issue does not constitute a test item under section 552.122(b), and the commission may not withhold it under section 552.122 of the Government Code. As you raise no further arguments against disclosure of the remaining 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

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Enc. Submitted documents

cc: Requestor
(w/o enclosures)