



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 16, 2009

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

OR2009-17768

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# 365965.

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to two specified investigations involving the requestor that were conducted by the commission's Civil Rights Office. You state that most of the requested information will be released 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 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 some 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 information you have marked in the interview questions at issue 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. We find, however, that a portion of one of the interview questions you have marked consists of information that does not test any specific knowledge of an applicant. Thus, we determine this information 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 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](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,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/rl

Ref: ID# 365965

Enc. Submitted documents

c: Requestor  
(w/o enclosures)