



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2010

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

OR2010-03302

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# 373234 (OR-20091228-4857).

The Texas Health and Human Services Commission (the "commisison") received a request for information pertaining to job posting numbers 132411 and 91827.¹ You state the commission has released some 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 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

¹The commission sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

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.

We understand you to raise section 552.122 of the Government Code for the interview questions and answers you have indicated in the submitted documents. You argue that release of these interview questions and answers would compromise the effectiveness of the commission's interview and hiring process. You state the commission uses these interview questions on a continuing basis during the commission's hiring process. Having considered your arguments and reviewed the submitted information, we find that the interview questions at issue qualify as test items under section 552.122(b). We also find that release of the answers to these questions would tend to reveal the questions themselves. Therefore, the commission may withhold the marked information under section 552.122(b) of the Government Code.

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

Ref: ID# 373234

Enc. Submitted documents

cc: Requestor
(w/o enclosures)