



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2011

Ms. Janet Smith
Assistant General Counsel
Texas Department of State Health Services
P.O. box 149347
Austin, Texas 78714-9347

OR2011-02049

Dear Ms. 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# 408911 (DSHS ORR No. 18276).

The Texas Department of State Health Services (the "department") received a request for screening and hiring information related to two specified job postings. You state most of the requested information has been or will be released to the requestor. You claim 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.

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 actual answers to those questions, under section 552.122 of the Government Code. You state these questions

are "interviewing tools developed by the department to measure an interviewee's skills, knowledge, intelligence, capacities and/or aptitude to perform the tasks for a particular position." You inform us these questions will be used in future interviews and argue that release of this information would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we conclude the interview questions and actual answers to these questions, which we have marked, qualify as test items for the purposes of section 552.122(b). Accordingly, we conclude the department may withhold the interview questions and actual answers we have marked under section 552.122 of the Government Code. We find, however, the remaining interview questions and actual answers evaluate an applicant's general workplace skills and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine the remaining questions and actual answers are not test items under section 552.122(b) of the Government Code and therefore may not be withheld on this basis. 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/vb

Ref: ID# 408911

Enc. Submitted documents

c: Requestor
(w/o enclosures)