



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2011

Ms. Jena R. Abel
Assistant General Counsel
Texas Board of Nursing
333 Guadalupe Street, Suite 3-460
Austin, Texas 78701

OR2011-14884

Dear Ms. Abel:

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# 433074.

The Texas Board of Nursing (the "board") received a request for the following information pertaining to individuals, including the requestor, who applied for a specific position: interview questions and answers; scoring information; and information regarding whether applicants were internal or external. 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.

Initially, we note you have not submitted any information responsive to the portions of the request pertaining to scoring and whether or not applicants were internal or external. To the extent information responsive to those parts of the request existed on the date the board received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.122 of the Government Code excepts from required public 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 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. Open Records Decision No. 626 at 6 (1994). 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 state the submitted interview questions and answers “tend to reveal the [applicants’] knowledge in particular subject areas, such as criminal justice and investigatory processes and procedures.” Further, you indicate release of the submitted information could compromise future interviews. Based on your arguments and our review, we find interview question 14 and the criminal justice questions we have marked qualify as test items under section 552.122(b) of the Government Code. We also find the release of the applicants’ answers to these questions would tend to reveal the questions themselves. Therefore, pursuant to section 552.122(b) of the Government Code, the board may withhold question 14 and the criminal justice questions we have marked, along with the corresponding applicants’ answers. We find, however, interview questions 1 through 13 and 15 through 17 evaluate the applicants’ individual abilities, personal opinions, and subjective abilities to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, the board may not withhold questions 1 through 13 and 15 through 17 from disclosure under section 552.122(b) of the Government Code. As you have not claimed any other exceptions to disclosure, the board must release this remaining information.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 433074

Enc. Submitted documents

c: Requestor
(w/o enclosures)