



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2012

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

OR2012-06838

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# 453041.

The Texas Health and Human Services Commission (the “commission”) received a request for the requestor’s tests, interviews, and reference checks for specified job postings.¹ You state you will release most of the requested information to the requestor. You claim 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.²

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 the term “test item” in section 552.122 includes “any

¹You indicate the 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)

²We assume 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 those records contain substantially different types of information than that submitted to this office.

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. *Id.* 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); Open Records Decision No. 626 at 8.

You seek to withhold the marked questions and the answers provided to those questions under section 552.122 of the Government Code. You state that the questions are designed to evaluate an individual's knowledge or ability in a particular area. You inform us that the questions are used on a continuing basis during the commission's hiring process. You state that the release of this information would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we find the questions you have marked are "test items" under section 552.122(b) of the Government Code. We also find the answers you have marked would tend to reveal the questions. Therefore, the commission may withhold the information you have marked under section 552.122 of the Government Code. The remainder of the information 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, 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 453041

Enc. Submitted documents

cc: Requestor
(w/o enclosures)