



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2013

Mr. Steve Smeltzer
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2013-01126

Dear Mr. Smeltzer:

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# 477259.

The Texas Department of Criminal Justice (the "department") received a request for the PERS-289 interview schedule, the PERS-289 interview documentation form answers for the requestor and the selected applicant, and a copy of the selected applicant's employment application for Job Posting No. 031047ER Clerk III-Trust Fund. You state the department has released or will release some of the requested information 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.

Initially, we note the submitted interview questions are not responsive to the instant request because they were excluded by the requestor. This ruling does not address the public availability of non-responsive information, and the department is not required to release non-responsive information in response to this request.

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. 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 are "intended to display the technical expertise of the applicant" and the department prefers to use similar questions from one position selection to the next. Further, you argue release of the information at issue could compromise future interviews. Having considered your arguments and reviewed the submitted information, we find the release of the recommended and actual responses to interview questions 6 and 8 would tend to reveal the questions themselves, which we conclude are test items for purposes of section 552.122(b) of the Government Code. Therefore, the department may withhold the responses to questions 6 and 8, which we have marked, under section 552.122(b) of the Government Code. We find, however, the remaining responses correspond to questions which only evaluate an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, we determine the remaining responses do not consist of test items under section 552.122(b) and may not be withheld on that basis. As you have not claimed any other exceptions to disclosure, the remaining responsive information 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 477259

Enc. Submitted documents

c: Requestor
(w/o enclosures)