



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2014

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

OR2014-01538

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# 511990.

The Texas Health and Human Services Commission (the "commission") received a request for the hiring packets for specified positions.¹ You state the commission is releasing some of the requested information. 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 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." 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.* at 7. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976); *see generally* ORD 626 at 4-5. Section 552.122 also protects the answers

¹You state 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); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

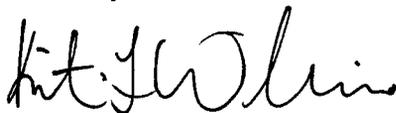
to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987).

You seek to withhold the submitted test exercises and responses under section 552.122. You explain the commission uses the questions at issue on a continuing basis during the commission's hiring process. You assert the release of the information at issue would compromise the effectiveness of the commission's interview and hiring process. Having considered your arguments and reviewed the submitted information, we find the test exercises evaluate an applicant's specific knowledge or ability in a particular area and, thus, qualify as "test items" under section 552.122(b). We also find the release of the responses to these test exercises would tend to reveal the exercises themselves. However, we find the remaining information, consisting of the grading scales for the test exercises, does not reveal any test questions. Accordingly, the commission may not withhold this information, which we have marked for release, under section 552.122 of the Government Code. Therefore, with the exception of the information we have marked for release, the commission may withhold the submitted 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 511990

Enc. Submitted documents

c: Requestor
(w/o enclosures)