



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2014

Ms. Amy Benya
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2014-06142

Dear Ms. Benya:

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# 519813.

The Texas Department of Criminal Justice (the "department") received a request for the questions, answers, and interviewer notes for two named applicants for a specified job posting. You state the department has released or will release 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 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 state the submitted questions and answers “are intended to display the technical expertise of the applicant.” You contend release of the information at issue would “compromise the effectiveness of future examinations” because the department reuses similar interview questions. Upon review, we conclude the interview questions we have marked qualify as test items under section 552.122(b). We also find release of the model answers and applicants’ responses to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the interview questions and the corresponding model answers and applicants’ responses we have marked under section 552.122(b). We find, however, the remaining information, which consists of the applicants’ closing remarks, does not test any specific knowledge of an applicant. Accordingly, we determine the remaining information does not consist of test items under section 552.122(b) and may not be withheld on that basis.

We note the remaining information includes personal information of an individual who may be a current or former department employee and, thus, may be subject to section 552.117(a)(3) of the Government Code.¹ In Open Records Letter No. 2005-01067 (2005), we issued a previous determination that authorizes the department to withhold the present and former home addresses and telephone numbers, social security numbers, and family member information of its current or former employees under section 552.117(a)(3), regardless of whether the current or former employee complies with section 552.1175 of the Government Code, without the necessity of requesting a decision under the Act. *See* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). Therefore, if the individual whose information is at issue is a current or former department employee, the department must withhold the information we have marked under section 552.117(a)(3) in accordance with Open Records Letter No. 2005-01067. The department may not withhold this information under section 552.117(a)(3) in accordance with Open Records Letter No. 2005-01067 if the individual is not a current or former department employee.

In summary, the department may withhold the information we have marked under section 552.122(b) of the Government Code. If the individual whose information is at issue is a current or former department employee, the department must withhold the information we have marked under section 552.117(a)(3) of the Government Code in accordance with Open Records Letter No. 2005-01067. The department must release the remaining information.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 519813

Enc. Submitted documents

c: Requestor
(w/o enclosures)