



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 2, 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

OR2014-07385

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# 521481.

The Texas Department of Criminal Justice (the "department") received a request for interview questions and answers of all applicants for a specified job posting.¹ You state you have provided some 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.

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 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

¹We note the department asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see 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).

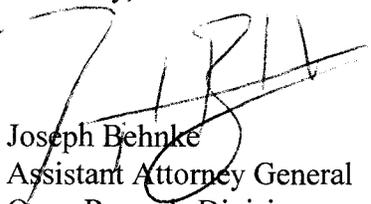
falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). 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 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 submitted information could compromise future interviews. Having considered your arguments and reviewed this information, we find the interview questions we have marked qualify as test items under section 552.122(b) of the Government Code. We also find release of the model answers and the applicants’ responses to these questions would tend to reveal the questions themselves. Therefore, the department may withhold the interview questions, the corresponding model answers, and the applicants’ responses we have marked under section 552.122(b) of the Government Code. We find, however, the remaining information evaluates each applicant’s general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and does not test any specific knowledge of the applicants. Accordingly, we determine this information does not constitute a test item under section 552.122(b). Therefore, the department may not withhold the remaining information on this basis and it 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.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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/tch

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Enc. Submitted documents

c: Requestor
(w/o enclosures)