



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 2014

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

OR2014-09086

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# 524042.

The Texas Health and Human Services Commission (the "commission") received a request for all interview records related to two specified job postings.<sup>1</sup> You state the commission will release some information to the requestor. You claim portions of the remaining requested 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.<sup>2</sup>

Section 552.122(b) 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

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<sup>1</sup>We note the commission sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

<sup>2</sup>We 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.

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 seek to withhold the interview questions and answers and the test materials you have marked under section 552.122. You state the commission uses the interview questions at issue on a continuing basis during the commission’s hiring process, and 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 one of the interview questions you have marked, as well as the test materials you have marked, qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to this interview question would tend to reveal the question itself. However, we find the remaining interview questions 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 conclude the remaining questions and answers are not test items under section 552.122(b). Therefore, with the exception of the information we have marked for release, the commission may withhold the information you have marked under section 552.122(b) of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. In this instance, we are unable to determine whether the individual whose information is at issue is a current or former commission employee who

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

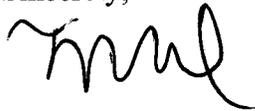
timely elected confidentiality under section 552.024. Therefore, we must rule conditionally. To the extent the individual whose information is at issue is a current or former commission employee who timely requested confidentiality under section 552.024, the commission must withhold the information we have marked under section 552.117(a)(1). Conversely, to the extent the individual at issue is not a current or former commission employee or did not timely request confidentiality under section 552.024, the commission may not withhold the marked information under section 552.117(a)(1).

In summary, with the exception of the information we have marked for release, the commission may withhold the information you have marked under section 552.122(b) of the Government Code. To the extent the individual whose information is at issue is a current or former commission employee who timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The commission must release the remaining information.

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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 524042

Enc. Submitted documents

c: Requestor  
(w/o enclosures)