



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2015

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

OR2015-09802

Dear Ms. Whitney:

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# 567831.

The Texas Department of Criminal Justice (the "department") received a request for the applications and attachments for the two applicants selected for a specified job position, the rationale for the selection of the two selected applicants, and a specified form for the selected applicants and the requestor.¹ You state you will release 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 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. ORD 626 at 6. The question of whether specific information

¹The submitted information reflects the department sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

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. Having considered your arguments and reviewed the submitted information, we find the question we have marked qualifies as a test item under section 552.122(b) of the Government Code. We also find release of the recommended response and the applicants’ responses to this question would tend to reveal the question itself. Therefore, the department may withhold the information we have marked under section 552.122(b) of the Government Code. We find, however, the remaining information 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) of the Government Code and may not be withheld on that basis. As you raise no further exceptions for this information, the remaining 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.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, flowing style.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/bhf

Ref: ID# 567831

Enc. Submitted documents

c: Requestor
(w/o enclosures)