



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Mr. Robert E. Rodman
Assistant General Counsel
Texas Workforce Commission
101 East Fifth Street
Austin, Texas 78778-0001

OR2015-11288

Dear Mr. Rodman:

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# 566507 (TWC Tracking No. 150323-012).

The Texas Workforce Commission (the "commission") received a request for all information related to two specified job postings, to include all notes, scoring sheets, scoring matrices, interview questions, and applicant answers to questions. 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 representative sample of information.¹

Initially, we note you did not submit any information responsive to the request for notes, scoring sheets, or scoring matrices generated in regard to the specified job postings. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to these aspects of the request exists, we assume the commission has released it to the requestor. If

¹We 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 that those records contain substantially different types of information than that submitted to this office.

the commission has not released any such information, it must do so. Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Section 552.122 of the Government Code exempts 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.” ORD 626 at 6. The term “test item” does not encompass evaluations of an employee’s overall job performance or suitability. *See id.* at 8. 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 6. 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.

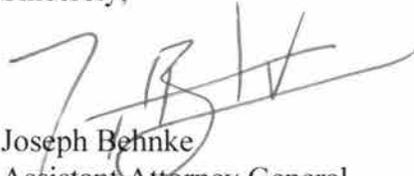
You seek to withhold the submitted questions and responses to the submitted questions under section 552.122 of the Government Code. You inform us the questions at issue test the knowledge, skills, and abilities of an applicant in a particular area. You state the commission uses these questions on a continuing basis during its hiring process. Additionally, you state release of the information at issue would compromise the effectiveness of the commission’s interview and hiring process. Based on these representations and our review, we agree some of the questions at issue qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions themselves. Accordingly, the commission may withhold the questions and answers we have marked pursuant to section 552.122(b) of the Government Code. We find, however, the remaining information only evaluates an 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 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 arguments against disclosure, 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](#), 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, appearing to read 'JBH', with a large, stylized flourish extending from the end of the signature.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 566507

Enc. Submitted documents

c: Requestor
(w/o enclosures)