



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 7, 2015

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

OR2015-13610

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# 570358.

The Texas Department of Criminal Justice (the "department") received a request for records from his interview for a specified job.<sup>1</sup> The department states it has released or will release some of the requested information. The department claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception the department claims 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 falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.*

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<sup>1</sup>We note the department 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); *see also* *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).

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).

The department states the interview questions at issue are intended to display the technical expertise of the applicant. Further, the department argues release of the information at issue could compromise future interviews. Based on the department’s representations and our review, we conclude the information we have marked qualifies 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. Therefore, the department may withhold the questions and answers we have marked under section 552.122(b) of the Government Code. We note, however, the remaining information does not test any specific knowledge of an applicant. Accordingly, we find 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 the department raises no other exceptions to disclosure, it 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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 570358

Enc. Submitted documents

c: Requestor  
(w/o enclosures)