



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 30, 2015

Ms. Maureen Franz  
Deputy Chief Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2015-15624

Dear Ms. Franz:

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# 573664.

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to a specified job posting. You state the commission has released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted sample of information.<sup>1</sup>

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.* 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

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<sup>1</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.

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 commission seeks to withhold the marked interview questions and answers because you believe they meet the standard to be considered test items. You further state the commission uses these interview questions on a continuous basis during its hiring processes. Upon review, we conclude most of the marked interview questions qualify as test items under section 552.122(b). We also find release of the responses to these questions would tend to reveal the questions. Therefore, the commission may withhold these interview questions and corresponding responses under section 552.122(b) of the Government Code. We find, however, the remaining information, which we have marked for release, 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 must be released to the requestor.

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,



Karen Hattaway  
Assistant Attorney General  
Open Records Division

KH/sdk

Ref: ID# 573664

Enc. Submitted documents

c: Requestor  
(w/o enclosures)