



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 11, 2015

Ms. Karen Ray
Chief Counsel
Texas Health and Human Service Commission
Mail Code 1070
P.O. Box 13247
Austin, Texas 78711

OR2015-18978

Dear Ms. Ray:

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# 578854.

The Texas Health and Human Services Commission (the "commission") received a request for documents generated and received by specified individuals and investigative procedures used in regards to a specified investigation. You state you have released some information. 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

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. 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, but does not encompass evaluations of an employee's overall job performance or suitability. ORD 626 at 6. Whether information falls within the section 552.122 exception must be determined on a case-by-case

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

basis. 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). You state the interview questions are test items used by the commission on a continuing basis. Having reviewed the submitted information, we agree that the information we have marked are “test items” as contemplated by section 552.122(b). Furthermore, we find release of the answers to the marked questions would reveal the questions themselves. Therefore, the commission may withhold the questions and answers we have marked under section 552.122(b). However, upon review, we find that the remaining information does not test an individual’s or group’s knowledge or ability in a particular area. Therefore, the commission may not withhold any of the remaining information under section 552.122. 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 578854

Enc. Submitted documents

c: Requestor
(w/o enclosures)