



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 25, 2015

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

OR2015-20097

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# 580724.

The Texas Health and Human Services Commission (the "commission") received a request for the test scores and copies of the tests administered for seven specified job postings. 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.<sup>1</sup>

We note a portion of the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2014-11885 (2014). In that ruling, we concluded the commission may withhold certain information under section 552.122(b) of the Government Code and must release the remaining information. We have no indication the law, facts, and circumstances on which this ruling was based have changed. Accordingly, for the submitted information that is

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<sup>1</sup>We assume that 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.

identical to the information previously requested and ruled upon by this office, the commission may continue to rely on Open Records Letter No. 2014-11885 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will consider your argument against disclosure.

Section 552.122(a) of the Government Code exempts from disclosure “[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]” Gov’t Code § 552.122(a). 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.” ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(a) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976). *See generally* ORD 626 at 4-5. 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 seek to withhold the submitted questions and answers under section 552.122 of the Government Code. You state the commission uses the interview questions at issue on a continuing basis during the commission’s hiring process. You assert the questions test the knowledge and abilities of applicants in a particular area. Based on your representations and our review, we agree the submitted questions are “test items” under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, the commission may withhold the remaining questions and answers at issue under section 552.122(b) of the Government Code.

In summary, the commission may continue to rely on Open Records Letter No. 2014-11885 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. To the extent the information at issue was not subject to the prior ruling, the commission may withhold the remaining questions and answers at issue under section 552.122(b) of the Government Code.

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,

A handwritten signature in black ink, appearing to read "Tim Neal". The signature is stylized with a large initial "T" and a cursive "Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 580724

Enc. Submitted documents

c: Requestor  
(w/o enclosures)