



January 12, 2015

Mr. Timothy E. Bray  
Deputy General Counsel  
Texas Department of State Health Services  
P.O. Box 149347  
Austin, Texas 78714-9347

OR2015-00507

Dear Mr. Bray:

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# 550437 (DSHS ORR# 23636/2015).

The Texas Department of State Health Services (the "department") received a request for information pertaining to hiring in the "Organics Group of the Lab Services Section," including applications and interview matrices, for a specified time period. You state you have released or will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.122 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.122 of the Government Code excepts 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 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 Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the

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<sup>1</sup>Although you also raise section 552.101 for the submitted information, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

answers might reveal the questions themselves. See Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You seek to withhold portions of the submitted information under section 552.122 of the Government Code. You assert the interview questions you marked are factual questions requiring specific knowledge, situational questions requiring an applicant to explain what steps are necessary in a given situation, or behavior questions requiring an applicant to describe a specific action they took in a specific situation that relates to the "knowledge, skills, and abilities" of a particular position. You argue that release of the information at issue would compromise the effectiveness of future examinations and limit the department's ability to select the best qualified candidate in future interviews. You also state the department reuses the interview questions at issue. Based on your representations and our review, we conclude most of the information at issue qualifies as test items under section 552.122(b) of the Government Code. However, we find the remaining information at issue evaluate applicants' individual experience and subjective abilities to respond to particular situations and does not test any specific knowledge of an applicant. Accordingly, this information does not constitute a test item, and the information, which we have marked for release, may not be withheld from disclosure under section 552.122(b). Thus, except for the information we marked for release, the department may withhold the information you marked under section 552.122(b). As you raise no further exceptions against disclosure, 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](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,



Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/dls

Ref: ID# 550437

Enc. Submitted documents

c: Requestor  
(w/o enclosures)