



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 17, 2015

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2015-24121

Dear Ms. Parker:

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# 587419.

The Texas Department of Transportation (the "department") received a request for the requestor's interview performed on a specified date. You state the department will release 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) 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. *Id.* 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.

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

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

You seek to withhold the submitted questions and answers under section 552.122 of the Government Code. You state the information at issue relates to the knowledge, skills, and abilities required for the position and does not focus on qualifications or experiences unique to a particular applicant. You also state the department anticipates using these questions in future interviews. Based on your representations and our review, we agree the question we marked is a “test item” under section 552.122(b) of the Government Code. Furthermore, we find release of the applicant’s answer to this question would reveal the question itself. Accordingly, the department may withhold the interview question and applicant’s answer we marked under section 552.122(b) of the Government Code. However, we find you have failed to demonstrate the remaining information constitutes test items under section 552.122(b). Accordingly, the department may not withhold any portion of the remaining information under section 552.122 of the Government Code. As you raise no further arguments 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, 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 cursive script that reads "Paige Thompson". The signature is written in black ink and is positioned above the typed name and title.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 587419

Enc. Submitted documents

c: Requestor
(w/o enclosures)