



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 28, 2016

Mr. Jonathan Miles
Open Records Attorney
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2016-26287

Dear Mr. Miles:

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#635883 (HHSC Reference No. 11622).

The Texas Health and Human Services Commission (the "commission") received a request for information concerning four specified job postings. You state you have released some information to the requestor. 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(a) of the Government Code excepts 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).

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.

You seek to withhold the submitted questions and answers under section 552.122 of the Government Code. You assert the questions test the knowledge and abilities of applicants in a particular area. You also inform us the commission uses the submitted questions on a continuing basis. Based on your representations and our review, we find some of the submitted questions are "test items" under section 552.122(a) 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 questions we have marked and their respective answers, under section 552.122(a) of the Government Code. However, we find the remaining questions at issue do not evaluate an individual's or group's knowledge or ability in a particular area. Rather, the remaining information at issue reveals questions that evaluate an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation. Accordingly, the commission may not withhold any portion of the remaining information under section 552.122 of the Government Code. The commission must release the remaining information.

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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID#635883

Enc. Submitted documents

c: Requestor
(w/o enclosures)