



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 27, 2017

Mr. Zachary Brown
Assistant General Counsel
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2017-04250

Dear Mr. Brown:

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# 647429.

The Texas Department of Criminal Justice (the "department") received a request for information related to a specified interview with the requestor. You state the department has released some of the requested 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 information.

Section 552.122 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. 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 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 interview questions, model answers, and interviewee responses 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 department 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(b) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, the department may withhold the questions and answers we have marked under section 552.122(b) 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 department may not withhold any portion of the remaining information under section 552.122 of the Government Code. As you raise no further exceptions to disclosure, the department 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,

A handwritten signature in black ink that reads "Erin Groff". The signature is written in a cursive, flowing style.

Erin Groff
Assistant Attorney General
Open Records Division

EMG/som

Ref: ID# 647429

Enc. Submitted documents

c: Requestor
(w/o enclosures)