



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2017

Mr. Thomas Bailey
Legal Services
VIA Metropolitan Transit
123 North Medina Street
San Antonio, Texas 78207

OR2017-17064

Dear Mr. Thomas:

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# 675206.

VIA Metropolitan Transit ("VIA") received a request for information pertaining to a specified job opening application process. VIA states it will release some information. VIA claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception VIA claims and reviewed the submitted representative sample of information.¹

Section 552.122(b) 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,

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.

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.

VIA states the submitted documents consist of “the standardized test and test questions developed by VIA that all applicants for the position of [e]mployee [c]ounselor must answer to be considered to fill a vacant position.” VIA states the submitted documents are a standard means of testing a candidate’s knowledge and skill for the position of employee counselor, and release of the submitted information would compromise the future integrity and effectiveness of candidate testing. Having considered VIA’s arguments and reviewed the submitted information, we find the test questions we have marked qualify as test items under section 552.122(b) of the Government Code. We also find the release of the applicants’ responses to these questions would tend to reveal the questions themselves. Therefore, pursuant to section 552.122(b) of the Government Code, VIA may withhold the questions and the corresponding applicants’ responses we have marked. However, we find the remaining information does not constitute test items. Accordingly, this information is not excepted from disclosure under section 552.122(b) of the Government Code. 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/tdw

Ref: ID# 675206

Enc. Submitted documents

c: Requestor
(w/o enclosures)