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ATTORNEY GENERAL OF TEXAS

February 8, 2018

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

OR2018-02917

Dear Mr. Miller:

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# 694751 (TDCJ #ZT0084).

The Texas Department of Criminal Justice (the "department") received a request for certain hiring information pertaining to a specified position.¹ The department claims some of the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception the department claims and reviewed the submitted information.

Initially, we note the department has only submitted interview questions and answers to this office for our review. We assume, to the extent any remaining requested information existed on the date the department received the request, the department has released it. If the department has not released any such information, it must do so at this time. *See Gov't Code* §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental

¹We note the department sought and received clarification of the request for information. *See Gov't Code* § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

body concludes no exceptions apply to requested information, it must release information as soon as possible).

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).

Although the department states the question and answer at issue is “intended to display the technical expertise of the applicant[.]” upon review, we find the information at issue only evaluates an applicant’s individual abilities, personal opinions, and subjective ability to respond to particular situations, and does not test any specific knowledge of an applicant. Accordingly, we conclude the information at issue does not consist of a test item under section 552.122(b) and the department may not withhold it on that basis. Therefore, as no other exceptions to disclosure have been raised, the department must release the submitted 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 694751

Enc. Submitted documents

c: Requestor
(w/o enclosures)