



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 26, 2019

Ms. Anastasia Broadfoot
Attorney, Office of the General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3137

OR2019-17547

Dear Ms. Broadfoot:

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# 772056 (Requests R000941-040319 and R001185-052819).

The Texas Alcoholic Beverage Commission (the "commission") received two requests from different requestors for questions and answers to a specified interview. 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 disclosure "a test item developed by a licensing agency or governmental body[.]" *Id.* § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that 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. Open Records Decision No. 626 at 6 (1994). 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) (construing statutory predecessor). 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(b) 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 these 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 commission may withhold the questions and answers we marked under section 552.122(b) of the Government Code. However, we find the remaining questions do not evaluate an individual's or group's knowledge or ability in a particular area. Rather, the remaining information 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. As no exceptions remain, 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,



Patrick P. Mehaffy
Assistant Attorney General
Open Records Division

PPM/gw

Ref: ID# 772056

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)