



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 3, 2019

Mr. Jonathan Miles  
Open Records Attorney  
Texas Health & Human Services  
P.O. Box 13247  
Austin, Texas 78711-3247

OR2019-27723

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# 789257 (OR-19114).

The Texas Health and Human Services Commission (the "commission") received a request for information pertaining to the requestor's application for a specified job posting, including scoring. You state you have released some 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 representative sample of information.<sup>1</sup>

Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. Gov't Code § 552.122(b). 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 9 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *See id.* at 6. 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.

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<sup>1</sup> We 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 that those records contain substantially different types of information than that submitted to this office.

You state the submitted information consists of a set of job-related questions and an in-basket test exercise. You assert release of this information would “compromise the future effectiveness of these questions as it would allow an individual to obtain a high score without having the knowledge required for the position.” Based on your representations and our review, we find the in-basket test question, which we marked, qualifies as a test item under section 552.122(b) of the Government Code. Therefore, the commission may withhold the information we marked under section 552.122(b) of the Government Code. However, we find the remaining information only evaluates an applicant’s general workplace skill, subjective ability to respond to particular situations, and overall suitability for employment, and does not test any specific knowledge of the applicant. Thus, we determine the remaining information does not consist of test items under section 552.122(b) of the Government Code. Therefore, the commission may not withhold the remaining information under section 552.122 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/be

Ref: ID# 789257

Enc. Submitted documents

c: Requestor  
(w/o enclosures)