



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 9, 2020

Mr. Nicholas Morrell
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2020-10630

Dear Mr. Morrell:

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# 820966 (OGC# JN0034).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to an interview for a specified job posting. You state you will release 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 information.

Section 552.122(a) of the Government Code excepts from disclosure "[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]" Gov't Code § 552.122(a). 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." ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(a) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976). *See generally* ORD 626 at 4-5. 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).

You seek to withhold the submitted interview questions, model answers, and interviewee responses under section 552.122 of the Government Code. You inform us the questions at

issue test the knowledge and abilities of an applicant for the specified job. You state the department intends to continue using the questions at issue. Additionally, you state release of the information at issue would be detrimental to the department's interview and hiring process. Based on these representations and our review, we agree some of the questions at issue qualify as test items under section 552.122(b) of the Government Code. We also find the release of the model answers and interviewee responses to these questions would tend to reveal the questions themselves. Accordingly, the department may withhold the information we marked pursuant to 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. 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 <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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/gw

Ref: ID# 820966

Enc. Submitted documents

c: Requestor
(w/o enclosures)