



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 29, 2020

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

OR2020-12064

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# 824696 (OGC# PP0199).

The Texas Department of Criminal Justice (the "department") received a request for a specified interview documentation form. 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.¹

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). 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.

¹ 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 those records contain substantially different types of information than that submitted to this office.

You state release of the information at issue “would provide the public with an opportunity to formulate specific, well-thought out responses to each question.” You further state the department uses similar questions for hiring multiple positions. Based on your representations and our review, we conclude some of the information at issue qualifies as a “test item” 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 department may withhold the information we marked under section 552.122(b) of the Government Code. However, we find the remaining information at issue does 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 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/jlbn

Ref: ID# 824696

Enc. Submitted documents

c: Requestor
(w/o enclosures)