



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 26, 2016

Mr. James G. Nolan  
Associate Deputy General Counsel  
Texas Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2016-19379

Dear Mr. Nolan:

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# 624227 (CPA ORTS# 12503313573).

The Texas Comptroller of Public Accounts (the "comptroller's office") received a request for information pertaining to property tax education courses approved by a specified division of the comptroller's office. You claim some of the submitted information is excepted from disclosure under section 552.122 of the Government Code. You indicate release of the submitted information may implicate the interests of the Texas Department of Licensing and Regulation (the "department"). Further, you state release of the submitted information may implicate the proprietary interests of Property Tax Education Coalition, Inc. ("Education Coalition"). Accordingly, you state, and provide documentation showing, you notified the department and Education Coalition of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code §§ 552.304 (interested party may submit comments stating why information should or should not be released), .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances).

We have received comments from Education Coalition. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.122 of the Government Code exempts from disclosure “[a] test item developed by a licensing agency or governmental body[.]” Gov’t Code § 522.122(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.” 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.

You seek to withhold the submitted questions and responses to the submitted questions, which you indicated, under section 552.122 of the Government Code. You inform us the questions at issue are part of educational courses that evaluate an individual’s competency as a property tax professional, which is a designation given to individuals by the department. You further state “satisfactory completion of these courses, including the [questions at issue,] is required for initial certification and for continuing education requirements” of the department’s licensing for property tax professionals. Additionally, you state release of the information at issue would compromise the effectiveness of future examinations. Based on these representations and our review, we agree the questions at issue qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions themselves. Accordingly, the comptroller’s office may withhold the submitted questions and answers you indicated pursuant to section 552.122(b) of the Government Code.<sup>2</sup>

You note, and Education Coalition states, the remaining information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public

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

<sup>2</sup>As our ruling is dispositive, we need not address Education Coalition’s argument against disclosure of the information at issue.

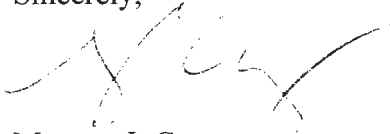
assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the comptroller's office may withhold the submitted questions and answers you indicated pursuant to section 552.122(b) of the Government Code. The comptroller's office must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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](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,



Meagan J. Conway  
Assistant Attorney General  
Open Records Division

MJC/akg

Ref: ID# 624227

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

2 Third Parties  
(w/o enclosures)