



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 30, 2017

Ms. Michele Freeland  
Legal Assistant  
Texas Department of Public Safety  
P.O. Box 4087  
Austin, Texas 78773-0001

OR2017-06598

Dear Ms. Freeland:

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# 657571 (DPS #17-1354).

The Texas Department of Public Safety (the "department") received a request for information pertaining to the Breath Test Operator School of Fondren Forensics, Inc. 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 an educational institution that is funded wholly or in part by state revenue[.]" *Id.* § 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." *Id.* 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.

The department states the submitted information consists of test questions for licensing Breath Alcohol Intoxilyzer Operators. The department represents the submitted questions are used on a continuing basis for testing operators, and asserts release of the information at issue would compromise the effectiveness of its licensing process. Upon review, we agree the submitted test questions are "test items" under section 552.122(a) of the Government Code. Furthermore, we find release of the answers to these questions would reveal the questions themselves. Therefore, the commission may withhold the submitted information under section 552.122(b) of the Government Code.

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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/sb

Ref: ID# 657571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)