



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2018

Ms. Lindsey Aston
General Counsel
The Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2060

OR2018-04182

Dear Ms. Aston:

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# 696753.

The Office of the Secretary of State (the "secretary of state's office") received a request for information pertaining to a specified investigation of a named individual. The secretary of state's office states it is withholding e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ The secretary of state's office claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception the secretary of state's office claims and reviewed the submitted representative sample of information.²

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

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²We 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.

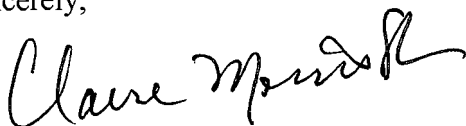
“test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(a) must be determined on a case-by-case basis. *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).

The secretary of state’s office seeks to withhold the submitted questions and answers under section 552.122 of the Government Code. The secretary of state’s office indicates the questions test the knowledge and abilities of applicants in a particular area. The secretary of state’s office also states it uses the submitted questions on a continuing basis. Based on these representations and our review, we find the submitted questions are “test items” under section 552.122(a) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, the secretary of state’s office may withhold the submitted questions and answers under section 552.122(a) 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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 696753

c: Requestor