



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 1, 2018

Mr. David Timberger  
Director  
General Law Division  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2018-04850

Dear Mr. Timberger:

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# 698415 (PIR No. 18-37496).

The Texas Commission on Environmental Quality (the "commission") received a request for all information pertaining to a specified position within the commission. You state you have released some information. You claim some of 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.<sup>1</sup>

Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. Gov't Code § 552.122(b). 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. Open Records Decision No. 626 at 9 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *See id.* at 6. Traditionally, this office has applied section 552.122

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

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 answers you marked under section 552.122 of the Government Code. You assert the questions test the required technical and expert knowledge and abilities of applicants in the information technology field. You also inform us the commission uses the submitted questions on a continuing basis. Based on your representations and our review, we conclude the questions the commission marked consist of test items under section 552.122(b). Furthermore, we find release of the answers and responses to these questions would reveal the questions themselves. Therefore, the commission may withhold the information it marked under section 552.122(b). The commission 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 [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,



Sidney M. Pounds  
Assistant Attorney General  
Open Records Division

SMP/gw

Ref: ID# 698415

Enc. Submitted documents

c: Requestor  
(w/o enclosures)