



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2019

Mr. Michael P. Mondville
General Counsel
Windham School District
P.O. Box 40
Huntsville, Texas 77342-0040

OR2019-29277

Dear Mr. Mondville:

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# 791966.

The Windham School District (the "district") received a request for the complete selection boards for three specified positions. You state you will release some of the information. You state you have no information responsive to a portion of the request.¹ 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 a . . . governmental body[.]" Gov't Code § 552.122(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," but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). The question of whether specific information falls within the scope of section 552.122(b) must be

¹ The Act does not require a governmental body to disclose information that did not exist when the request for information was received. *See generally Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

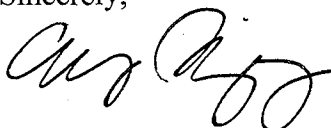
determined on a case-by-case basis. *Id.* Traditionally, this office, has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976) (construing statutory predecessor). Section 552.122 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.

Upon review, we conclude some of the submitted questions consist of test items under section 552.122(b). We also find release of the recommended responses to these questions would tend to reveal the questions themselves. Therefore, the district may withhold these questions and their recommended responses, which we marked, under section 552.122(b). However, we find you failed to demonstrate the remaining information constitutes a test item or reveals test questions. Thus, the district may not withhold the remaining information on the basis of section 552.122(b) of the Government Code. The district 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/gw

Ref: ID# 791966

Enc. Submitted documents

c: Requestor
(w/o enclosures)