



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

November 6, 2019

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

OR2019-31269

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# 795650 (TCEQ PIR# 19-49213).

The Texas Commission on Environmental Quality (the "commission") received a request for information pertaining to a specified job interview. You state you 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 information.

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 "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 commission seeks to withhold the submitted question and answer at issue under section 552.122 of the Government Code. Upon review, we find the question at issue does not evaluate an individual's or group's knowledge or ability in a particular area. Rather, the information at issue reveals a question that evaluates an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation. Accordingly, the commission may not withhold the information at issue under section 552.122 of the Government Code. The commission must release the submitted 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,

A handwritten signature in cursive script that reads "Meagan Hunter".

Meagan Hunter  
Assistant Attorney General  
Open Records Division

MH/rm

Ref: ID# 795650

Enc. Submitted documents

c: Requestor  
(w/o enclosures)