



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 22, 2019

Mr. Ronny H. Wall
Senior Associate General Counsel
Texas Tech University System
P.O. Box 45031
Lubbock, Texas 79409-5031

OR2019-33025

Dear Mr. Wall:

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# 797155.

Texas Tech University (the "university") received a request for information pertaining to a specified test administered to the requestor's child. 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.

Initially, we note a portion of the submitted information is subject to section 26.006 of the Education Code. Section 26.006 provides in relevant part:

(a) A parent is entitled to:

- (1) review all teaching materials, instructional materials, and other teaching aids used in the classroom of the parent's child; and
- (2) review each test administered to the parent's child after the test is administered.

(b) A school district shall make teaching materials and tests readily available for review by parents. The district may specify reasonable hours for review.

Educ. Code § 26.006(a), (b). The information at issue, which we marked, consists of a test that was administered to the requestor's child. Thus, section 26.006 is applicable to the test at issue. You assert this test is excepted from disclosure under section 552.122 of the Government Code, an exception to disclosure found in the Act. We note statutes that

govern access to specific information prevail over the Act's general exceptions. *See* Open Records Decision Nos. 623 (1994), 525 (1989) (as a general rule Act's exceptions do not apply to information that other statutes make public). Accordingly, we find the requestor's statutory right of access to the test at issue under section 26.006(b) of the Education Code prevails over section 552.122 of the Government Code. Consequently, the university must allow the requestor access to the information we marked pursuant to section 26.006(b) of the Education Code. However, we will address your argument against disclosure of the remaining information.

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 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 state the information at issue is "used to evaluate a student's mastery of a given subject or discipline relative to Texas standards." You assert release of this information would require the university to develop new exams and would negatively impact operations. We note the remaining information consists of the answer key to the test at issue. Upon review, we find you failed to demonstrate the remaining information constitutes a test item or reveals test questions. Thus, the university may not withhold the remaining information on the basis of section 552.122(b) of the Government Code. Accordingly, the university must release the submitted information.

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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/rm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)