



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 10, 2020

Mr. Robert M. Sumners  
Director of Government Filings  
Office of the Secretary of State  
P.O. Box 13375  
Austin, Texas 78711-3375

OR2020-00982

Dear Mr. Sumners:

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# 805516.

The Office of the Secretary of State (the "secretary of state's office") received a request for information pertaining to a specified complaint involving a named individual. The secretary of state's office informs us it is releasing some information to the requestor. The secretary of state's office explains it is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code.<sup>1</sup> The secretary of state's office claims some of 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.<sup>2</sup>

Section 552.122 of the Government Code excepts from public 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 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

---

<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>2</sup> We assume that 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.

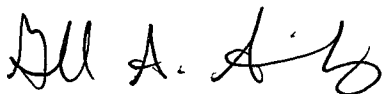
job performance or suitability. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118(1976). 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.

The secretary of state’s office states the questions and answers it marked are intended to “demonstrate knowledge of and competence in the statutory responsibilities and procedural requirements imposed on a notary public.” The secretary of state’s office contends release of the information at issue “could compromise the usefulness of the test modules and effectiveness of future examinations.” Based on these representations and our review, we conclude the questions at issue qualify as “test items” under section 552.122(b) of the Government Code. We also find release of the answers to these questions would reveal the questions themselves. Therefore, the secretary of state’s office may withhold the questions and answers it marked under section 552.122(b) of the Government Code. The secretary of state’s office 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,



Gerald Arismendez  
Assistant Attorney General  
Open Records Division

GAA/be

Ref: ID# 805516

Enc. Submitted documents

c: Requestor  
(w/o enclosures)