



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 1, 2020

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

OR2020-21886

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# 842772.

The Office of the Secretary of State (the "secretary's office") received a request for information pertaining to a specified complaint. You state the secretary's office released some information to the requestor. You claim the submitted information is exempted 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.¹

Section 552.122 of the Government Code exempts 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 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

¹ 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 those records contain substantially different types of information than that submitted to this office.

the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

The secretary's office seeks to withhold the submitted information under section 552.122 of the Government Code. The secretary's office indicates the questions test the knowledge and abilities of applicants in a particular area. The secretary's office contends release of the information at issue "could compromise the 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's office may withhold the question and answers we marked under section 552.122(b) of the Government Code. However, we find you failed to demonstrate the remaining information constitutes a test item or reveals test questions. Thus, the secretary's office may not withhold the remaining information on the basis of section 552.122(b) of the Government Code. The secretary'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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jm

Ref: ID# 842772

Enc. Submitted documents

c: Requestor
(w/o enclosures)