



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2022

Ms. Rachelle White
Director of Legal Affairs
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2022-06158

Dear Ms. White:

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# 935919 (ORR# 1160-21-2021).

The Texas Department of Criminal Justice (the "department") received a request for information pertaining to a specified employment position. The department claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹

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.

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.

Upon review, we conclude one of the submitted questions consists of a test item under section 552.122(b). We also find release of the response to this question would tend to reveal the question itself. Therefore, the department may withhold this question and its response, which we have marked, under section 552.122(b). However, we conclude the department has not established the remaining questions test an individual's or group's knowledge or ability in a particular area. *See* ORD 626 at 9. Therefore, the department may not withhold the remaining questions or their recommended responses under section 552.122(b) of the Government Code. Accordingly, the department 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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jxd

Ref: ID# 935919

Enc. Submitted documents

c: Requestor
(w/o enclosures)