



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 12, 2022

Ms. Je T'aime Swindell  
Director of Government Filings  
Office of the Secretary of State  
P.O. Box 13375  
Austin, Texas 78711-3375

OR2022-13700

Dear Ms. Swindell:

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# 947516.

The Office of the Secretary of State (the "secretary's office") received a request for information pertaining to a specified investigation file. You state you will release some information to the requestor. 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.

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 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's office seeks to withhold the submitted information under section 552.122 of the Government Code. The secretary's office states the information at issue consists of

questions from “a standard form examination used by the [secretary’s office] . . . for the purpose of evaluating a notary’s knowledge of the laws governing notarial acts.” The secretary’s office contends release of the information at issue “will compromise the future use and effectiveness of the notary public examination form.” 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 submitted questions and answers under section 552.122(b) of the Government Code.

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,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/be

Ref: ID# 947516

Enc. Submitted documents

c: Requestor  
(w/o enclosures)