



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2022

Mr. Brian Sears
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2022-33505

Dear Mr. Sears:

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# 980296 (PIR 22-2284).

The Texas Department of Public Safety (the "department") received a request for specified testing materials. 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(a) of the Government Code excepts from disclosure "[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]" Gov't Code § 552.122(a). 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." ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(a) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976). *See generally* ORD 626 at 4-5. 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).

The department seeks to withhold the submitted information under section 552.122 of the Government Code. The department asserts the materials at issue test the knowledge and abilities of applicants in a particular area. The department also informs us it uses the same

or similar testing materials on a continuing basis. Based on these representations and our review, we find some of the submitted materials are “test items” under section 552.122(a) of the Government Code. Therefore, with the exception of the information we have marked for release, the department may withhold the submitted information under section 552.122(a) of the Government Code. However, we find the remaining questions at issue do not evaluate an individual’s or group’s knowledge or ability in a particular area. Rather, the remaining information at issue reveals questions that evaluate an applicant’s individual abilities and subjective ability to respond to a particular situation. Accordingly, the department may not withhold any portion of the remaining information under section 552.122 of the Government Code. As you raise no further exceptions to disclosure, 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,

Colin Henry
Attorney
Open Records Division

CEH/pt

Ref: ID# 980296

Enc. Submitted documents

c: Requestor
(w/o enclosures)