



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2009

Mr. W. Montgomery Meitler
Assistant Counsel, Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2009-01370

Dear Mr. Meitler:

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# 333901 (TEA PIR# 10431).

The Texas Education Agency (the "agency") received a request for all examinations taken by a named individual from January 1, 2007 to the present and the answer keys to those examinations. You claim the requested information is excepted from disclosure under section 552.122 of the Government Code. You also state the requested information may contain proprietary information. You inform us, and provide documentation showing, that you notified the interested third party, Educational Testing Service ("ETS"), of the agency's receipt of the request for information and of ETS's right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). ETS has responded to the notice and argues the submitted information is excepted from disclosure under sections 552.110 and 552.122 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We address the agency's argument under section 552.122 of the Government Code. Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that 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. Whether information falls within the section 552.122 exception 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); Open Records Decision No. 626 at 8 (1994).

You state the submitted information consists of standardized educator certification examinations, answer keys, and answer sheets. You explain that the examinations are utilized to measure educators' knowledge and ability in a particular area. You further state release of the information at issue would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the submitted information, we find the submitted examinations, answer keys, and answer sheets qualify as test items under section 552.122(b). Therefore, the agency may withhold the submitted information pursuant to section 552.122(b) of the Government Code. As our ruling is dispositive, we need not address the remaining arguments against disclosure.

The agency requests this office issue a previous determination that would permit the agency to withhold from disclosure in the future educator certification examinations pursuant to section 552.122 of the Government Code without the need of requesting a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (previous determinations). We decline to issue such a previous determination at this time.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 333901

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Mr. Wilmer Hale
Wilmer Cutler Pickering Hale and Door L.L.P.
1875 Pennsylvania Avenue North West
Washington, DC 20006
(w/o enclosures)