



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2009

Mr. Robert Martinez
Environmental Law Division
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

OR2009-14489

Dear Mr. Martinez:

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# 362952.

The Texas Commission on Environmental Quality (the "commission") received a request for a copy of "the [distribution] test for B certification." You claim that the requested 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 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. *Id.* 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); Open Records Decision No. 626 at 8 (1994).

You contend that the submitted exam is excepted from disclosure under section 552.122(b) of the Government Code. You argue that the release of this information would compromise the effectiveness of future examinations. You also state that the commission reuses the exam year after year and release of the exam would provide the requestor with an unfair advantage to other individuals seeking the license at issue. Based on these representations and our review, we find that the submitted exam qualifies as a test item under section 552.122(b). Therefore, the commission may withhold the submitted information pursuant to section 552.122(b).

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, toll free, at (888) 672-6787.

Sincerely,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 362952

Enc. Submitted documents

cc: Requestor
(w/o enclosures)