



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 24, 2012

Ms. Christine Badillo  
Walsh, Anderson, Gallegos, Green and Treviño, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2012-05851

Dear Ms. Badillo:

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# 451600.

The Leander Independent School District (the "district"), which you represent, received a request for all elementary-level special education curriculum documents and assessments created during a specified time period.<sup>1</sup> 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 representative sample of information.<sup>2</sup>

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

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<sup>1</sup>You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>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.

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).

You inform us the submitted information consists of assessments that are collections of test items. You inform us the test items were developed by the district. You state the district is an educational institution that is funded wholly or in part by state revenue. We find the submitted test items evaluate an individual's or group's knowledge in a particular area. Based on your representations and our review of the information at issue, we conclude the district may withhold the submitted test questions and answers, which we have marked, under section 552.122(a) of the Government Code. *See* Open Records Decision No. 537 at 2 (1990) (statutory predecessor to Gov't Code § 552.122 provided express authority to withhold examination questions and answer keys). However, we find release of the submitted cover pages, blank pages, instructions, problem-solving rubric, scoring rubric, and additional information we marked would not reveal questions that are test items developed by the district for purposes of section 552.122(a). Thus, the district may not withhold the information, which we marked for release, under section 552.122(a) of the Government Code. As you raise no further exceptions to disclosure, this information must be released.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/bhf

Ref: ID# 451600

Enc. Submitted documents

c: Requestor  
(w/o enclosures)