



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2012

Mr. Brad Bowman
General Counsel
Office of General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR2012-12883

Dear Mr. Bowman:

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# 466477 (TDLR ID# 8323).

The Texas Department of Licensing and Regulation (the "department") received a request for information the department forwarded to its contractor for the purpose of creating testing materials for the Registered Property Appraiser Exam. You state the department has released some of the responsive information. You claim some of the submitted information is excepted from disclosure under section 552.122 of the Government Code. You also state you notified Psychological Services, Inc. ("PSI") of the request and of its right to submit arguments to this office explaining why its information should not be released. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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); ORD 626 at 8.

You explain the department furnished to PSI information defining what a licensed registered property appraiser should know and be tested on in order to obtain that license. You further explain that it was from this information that PSI prepared tests, the passing of which is required in order to obtain a license. You state that, except for the questions marked as “not used,” the questions contained in Exhibit 2 are used in a statutorily mandated examination. You contend the information at issue is excepted from disclosure under section 552.122(b) of the Government Code. You argue that the release of the questions at issue would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we find that the questions at issue are test items under section 552.122(b). Therefore, the department may withhold the information at issue 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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 466477

Enc. Submitted documents

**c: Requestor
(w/o enclosures)**

**Ms. Elaine Grainger
Psychological Services, Inc.
2950 North Hollywood Way, Suite 200
Burbank, California 91505
(w/o enclosures)**