



February 18, 2015

Ms. Maria Miller  
Legal Assistant  
Dallas County Community College District  
1601 South Lamar Street, Suite 208  
Dallas, Texas 75215-1816

OR2015-03189

Dear Ms. Miller:

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# 533913.

The Dallas County Community College District (the "district") received four requests for information pertaining to exams for a specified course. You claim 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 representative sample of information.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, the requestor states the requested exam information has previously been made publicly available via a district professor's website. Thus, the requestor argues the district

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<sup>1</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 those submitted to this office.

has waived its claim under section 552.122 by previously releasing the requested information to the public. *See* Open Records Decision No. 463 (1987) (governmental body can waive discretionary exceptions to disclosure by selective disclosure of information); *see also* Gov't Code § 552.007 (prohibiting selective disclosure of information). We note that whether the specific exam information at issue has previously been released to the public is a question of fact that this office cannot resolve in the open records ruling process. *See* Open Records Decision Nos. 554 (1990), 552 (1990). Thus, to the extent the requested exam information was previously released, the district may not now withhold such information under section 552.122 of the Government Code. However, to the extent the requested information was not previously released, we will address your claim under section 552.122 for this information.

Section 552.122 of the Government Code exempts from public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. Open Records Decision No. 626 (1994). 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 seek to withhold the submitted exam questions and the answers to the submitted exam questions under section 552.122 of the Government Code. You state these questions test the knowledge of the students who are taking the exams. You further state it is the district's policy to reuse these questions, and the release of the information at issue would compromise the effectiveness of future examinations. Based on your representations and our review, we agree the submitted exam questions are "test items" under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to these questions would reveal the questions themselves. Therefore, to the extent the requested information was not previously released, the district may withhold the submitted information under section 552.122(b) of the Government Code.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Paigelay".

Paige Lay  
Assistant Attorney General  
Open Records Division

PL/som

Ref: ID# 553913

Enc. Submitted documents

c: Requestor  
(w/o enclosures)