



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 30, 2015

Mr. J. Greg Hudson
Hudson & O'Leary, L.L.P.
1010 MoPac Circle, Suite 201
Austin, Texas 78746

OR2015-05948

Dear Mr. Hudson:

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# 558029.

The Capital Area Private Defender Service (the "CAPDS"), which you represent, received a request for the requestor's test answer sheet and the test answers. You claim the requested information is not subject to the Act. In the alternative, you claim the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered your claims and reviewed the submitted information.

Initially, you assert the CAPDS review committee (the "committee") is not a governmental body because the committee is not supported by public funds. You state the committee "evaluates local attorneys for criminal assignments for indigent adult criminal defendants" and consists of attorneys who volunteer their services to the CAPDS. We note the Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. Under the Act, the term "governmental body" includes several enumerated kinds of entities and "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]" Gov't Code § 552.003(1)(A)(xii). The term "public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). You acknowledge the committee was created by the CAPDS pursuant to article 26.047(e) of the Code of Criminal Procedure, which authorizes the creation of review committees to evaluate attorney qualifications for the representation of indigent criminal defendants as part of a managed assigned counsel program. *See* Crim. Proc. Code art. 26.047(e); *see also id.* art. 26.047(a)(2) (defining "[m]anaged assigned counsel program" as program operated with public funds by nonprofit corporation for purpose of appointing counsel).

Upon review, we find the committee is part of the CAPDS. You acknowledge the CAPDS is a governmental body supported by public funds. *See id.* art. 26.047(a)(2). Thus, we will address your argument against disclosure of the submitted 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). 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 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(b) 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 assert the release of the submitted information “could hamper and compromise the effectiveness of future examinations[.]” Upon review, we find the information at issue, consisting of the requestor’s multiple choice answer sheet and the multiple choice answer key, does not reveal any test questions. Accordingly, the CAPDS may not withhold the submitted information under section 552.122 of the Government Code, but must, instead, release the information to the requestor.

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, 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

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Mr. J. Greg Hudson - Page 3

Ref: ID# 558029

Enc. Submitted documents

c: Requestor
(w/o enclosures)