



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 29, 2015

Ms. Kristen Worman  
Deputy General Counsel  
Texas Real Estate Commission  
P.O. Box 12188  
Austin, Texas 78711-2188

OR2015-15480

Dear Ms. Worman:

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# 573317 (ORR# 20150512.2).

The Texas Real Estate Commission (the "commission") received a request for copies of the professional inspector exams administered during a specified time period. You state the commission has no information responsive to the national parts of the requested examinations.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of the Examination Board of Professional Home Inspectors ("EBPHI"); Pearson VUE ("Pearson"); and PSI Services, LLC ("PSI"). Accordingly, you state, and provide documentation showing, you notified EBPHI, Pearson, and PSI of the request for information and of the right of each to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from EBPHI and PSI. Further, you have submitted a copy of comments received

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

from Pearson. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.122 of the Government Code excepts from disclosure “[a] test item developed by a licensing agency or governmental body[.]” Gov’t Code § 522.122(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.” 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 6. 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 questions and responses to the submitted questions under section 552.122 of the Government Code. You inform us the questions at issue evaluate an applicant’s competency as a professional real estate inspector. You state there is a finite number of questions in the commission’s examination bank, and you explain the commission’s third party examination administrator uses a random selection of these questions to create a unique state portion of the professional inspector examination for each license applicant. Additionally, you state release of the information at issue would compromise the effectiveness of the commission’s ability to test an applicant’s knowledge and competency as a professional inspector prior to granting a license. Based on these representations and our review, we agree the questions at issue qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions themselves. Accordingly, the commission may withhold the submitted questions and answers pursuant to section 552.122(b) of the Government Code. As we are able to make this determination, we need not address the remaining arguments against disclosure of the submitted information.

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

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<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.

providing public information under the Act may be directed to 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# 573317

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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