



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 6, 2015

Ms. Jennifer O'Hara Calvin  
Counsel for the Coppell Independent School District  
Walsh, Anderson, Gallegos, Green & Trevino, P.C.  
P.O. Box 168046  
Irving, Texas 75016

OR2015-16228

Dear Ms. Calvin:

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# 574408.

The Coppell Independent School District (the "district"), which you represent, received a request for six categories of information created or distributed during a specified time period for eleven classes. You state you will make some information available to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

You seek to withhold the submitted information under section 26.006 of the Education Code, which provides in relevant part:

(a) A parent is entitled to:

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<sup>1</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(1) review all teaching materials, instructional materials, and other teaching aids used in the classroom of the parent's child; and

(2) review each test administered to the parent's child after the test is administered.

(b) A school district shall make teaching materials and tests readily available for review by parents. The district may specify reasonable hours for review.

Educ. Code § 26.006(a), (b). We note, however, section 26.006 of the Education Code provides a parent with a right of access to certain information used in the classroom of the parent's child. Section 26.006 does not expressly make information confidential for purposes of the Act. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality under section 552.101 must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, we conclude the district may not withhold any of the submitted information under section 26.006 of the Education Code.

Section 552.122(a) of the Government Code exempts 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 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 state the submitted information contains test items developed by the district. Based on your representation and our review, we agree the information we have marked consists of "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, the district may withhold the information we have marked under section 552.122(b) of the Government Code. However, we conclude district has failed to demonstrate any of the remaining information constitutes a test item for purposes of section 552.122. Therefore, district may not withhold any of the remaining information under section 552.122(b) of the Government Code.

We note some of the remaining information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of

records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district may withhold the information we have marked under section 552.122(b) of the Government Code. The district must release the remaining information; however, any information subject to copyright may be released only in accordance with copyright law.

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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 574408

Enc. Submitted documents

c: Requestor  
(w/o enclosures)