



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2015

Mr. Ira Davis
Executive Director
Capital Area Private Defender Service
816 Congress Avenue, Suite 700
Austin, Texas 78701

OR2015-17086

Dear Mr. Davis:

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# 575896.

The Capital Area Private Defender Service ("CAPDS") received a request for a specific examination it administered and the requestor's score result on the examination. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted any information responsive to the portion of the request for information pertaining to the requestor's score results. To the extent any information responsive to this portion of the request existed on the date CAPDS received the request, we assume CAPDS has released it. If CAPDS has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 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 seek to withhold the submitted information under section 552.122 of the Government Code. You explain CAPDS uses the examination questions at issue on a continuing basis to test applicants for criminal defense attorney appointments. You state the examination questions were developed to test applicants in areas of statutory, procedural, or case law. You further explain that results of the examination are used by CAPDS to determine the level of criminal assignment applicants should be given. You assert the release of the examination questions would compromise the effectiveness of future CAPDS examinations. Based on your representations and our review, we agree the submitted examination questions are “test items” under section 552.122(b) of the Government Code. Therefore, CAPDS 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, 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 575896

Enc. Submitted documents

c: Requestor
(w/o enclosures)