



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2015

Ms. Elizabeth P. West
Senior Attorney
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

OR2015-26804

Dear Ms. West:

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# 592541 (PIR No. 16-24220).

The Texas Commission on Environmental Quality (the "commission") received two requests from the same requestor for information pertaining to specified job postings. The commission states it has made some of the requested information available to the requestor, but claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.¹ 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).

Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. Gov't Code § 552.122(b). 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, but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 9 (1994). Whether information falls within the section 552.122 exception must be determined

¹We 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.

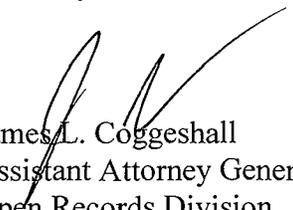
on a case-by-case basis. *See id.* at 6. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

Upon review, we conclude some of the submitted questions consist of test items under section 552.122(b). We also find release of the preferred answers and responses to these questions would tend to reveal the questions themselves. Therefore, the commission may withhold these questions and their preferred answers and responses, which we have marked, under section 552.122(b). However, we conclude the commission has not established any of the remaining questions test an individual’s or group’s knowledge or ability in a particular area. *See id.* at 9. Therefore, the commission may not withhold the remaining questions, or their recommended answers or responses, under section 552.122(b) of the Government Code. Accordingly, the commission must release the remaining 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, 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/sdk

Ref: ID# 592541

Enc. Submitted documents

c: Requestor
(w/o enclosures)