



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1997

Mr. Raymond D. Noah
Raymond D. Noah & Associates
1205 Texas Commerce Bank Center
P.O. Box 830647
Richardson, Texas 75083-0647

OR97-1869

Dear Mr. Noah:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 107934.

The Region 10 Education Service Center (the "center"), which you represent, received a request for published Enabling Objectives for K-12 and criterion referenced tests which are correlated to those objectives. You assert that the information is excepted from disclosure pursuant to section 552.122 of the Government Code. We have considered your arguments and have reviewed the information submitted.¹

Section 552.122 excepts from disclosure "[a] test item developed by an educational institution that is funded wholly or in part by state revenue." In Open Records Decision No. 537 (1990), this office determined that section 552.122 excepts the answer keys of a school district's exam questions. 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. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 (1994) at 6. Section 552.122 may apply where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

¹In reaching our conclusion here, we assume that the "representative samples" 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.

Upon review of the information submitted, we conclude it consists of test items for purposes of section 552.122, and therefore, this information may be withheld from disclosure pursuant to that section.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 107934

Enclosures: Submitted documents

cc: Mr. Mark Berry
Berry & Ainsa
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El Paso, Texas 79902
(w/o enclosures)

²You inform this office that "Region 10 develops exclusively for and disseminates only to member educational institutions, with their cooperation and participation, Enabling Objectives to the Essential Elements defined and required by the state of Texas." We cannot determine from this information whether the center is itself an educational institution for purposes of section 552.122. In reaching our decision in this case, therefore, we assume that the center is an educational institution funded in whole or in part by state revenue.