



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1997

Mr. Ron Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-2285

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109760.

The Texas Department of Public Safety received a request for

any and all tests issued by DPS or other governmental agencies used to fulfill requirements for the issuance of concealed handgun licensee and for the certification of gun safety instructors.

You claim that the requested tests are excepted from disclosure by section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the sample document that you have submitted.¹

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. Section 552.122 provides:

(a) A test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from [required public disclosure].

(b) A test item developed by a licensing agency or governmental body is excepted from [required public disclosure].

¹In reaching our conclusion here, 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.

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, but does not encompass evaluations of an employee's overall job performance or suitability. 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).

You explain that the tests at issue are administered pursuant to state statute and are used as "a tool to evaluate the instructor applicant's knowledge and ability in the area of concealed handguns." The test measures whether an applicant is qualified and has met the requirements to be an instructor. You argue that release of the test "would negate its usefulness as an evaluation tool." We find that you may withhold the concealed weapons tests under section 552.122.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 109760

Enclosures: Submitted documents

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(w/o enclosures)