



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 9, 2009

Mr. Augustin Rivera, Jr.
Dunn, Weathered, Coffey, Rivera & Kasperitis, P.C
611 South Upper Broadway
Corpus Christi, Texas 78401

OR2009-04750

Dear Mr. Rivera:

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# 339585.

Del Mar College (the "college"), which you represent, received a request for information related to the evaluations of the requestor, final grades from a class the requestor taught, and final examinations from classes taught by other faculty members. You state that you will release information responsive to the first two categories, with personally identifiable student information redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We 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.

Section 552.122(a) of the Government Code provides: "A test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from [required public disclosure]." This provision provides express protection for test items. Open Records Decision No. 537 (1990). 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. ORD 626 at 6. You state that the college is an educational institution that is funded wholly or in part by state revenue. You also state that the requested math examinations were developed by the college. We further find that the test questions evaluate an individual's or group's knowledge in a particular area. Thus, we agree that the college may withhold the submitted examinations under section 552.122(a). As our ruling is dispositive, we need not address your remaining argument.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/eeg

Ref: ID# 339585

Enc. Submitted documents

c: Requestor
(w/o enclosures)