



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2010

Ms. Ruth H. Soucy
Deputy General Counsel for Open Records
Texas Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2010-03187

Dear Ms. Soucy:

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# 371888 (Comptroller ID# 6042765199).

The Texas Comptroller of Public Accounts (the "comptroller") received two requests for (1) e-mails between certain individuals during specified time periods; and (2) copies of the requestor's Intermediate II examination that was administered in June and September of 2009, as well as the grading criteria or answer keys. You state the comptroller has released most of the responsive information. You claim the submitted test questions and answers are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122 of the Government Code excepts from required 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," but does not encompass evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). 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.* 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.

Having considered your arguments and reviewed the submitted information, we find the submitted test questions and answers evaluate an individual's or group's knowledge or ability in a particular area for purposes of section 552.122(b). We also find the release of the answers to these questions would tend to reveal the questions themselves. You state the master test questions and answers will be used in future interviews. You further argue that release of the master tests with answer keys and the requestor's examination "would destroy the future usefulness of [this information]." Therefore, we conclude the comptroller may withhold submitted information pursuant to 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.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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/cc

Ref: ID# 371888

Enc. Submitted documents

c: Requestor
(w/o enclosures)