



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2012

Ms. Amy L. Currier
Public Information Officer
Texas Funeral Service Commission
P.O. Box 12217
Austin, Texas 78711

OR2012-07111

Dear Ms. Currier:

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# 457383.

The Texas Funeral Service Commission (the "commission") received a request for information pertaining to a named licensee. You state the commission has released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim the submitted information is subject section 552.122 of the Government Code, which 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. ORD 626 at 6. 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.

You state the release of the submitted information may enable a person to deduce test items on a certain version of the Texas Mortuary Law Exam. We find the submitted information, which consists of a Scantron answer sheet, does not contain examination questions, nor does it provide any indication of the nature or content of the examination questions. Therefore, we find this information is not protected under section 552.122 and may not be withheld on that basis. Accordingly, the commission may not withhold this information under section 552.122(b). As you raise no further exceptions to disclosure, the submitted information must be released.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

Ref: ID# 457383

Enc. Submitted documents

c: Requestor
(w/o enclosures)