



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 5, 2012

Mr. Stephen E. Dubner  
For Quinlan Independent School District  
Law Office of Stephen E. Dubner  
3000 South Stemmons Freeway  
Lake Dallas, Texas 75065

OR2012-10355

Dear Mr. Dubner:

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# 458161.

The Quinlan Independent School District (the "district") received a request for eleven categories of information related to courses offered by the district during the 2011-2012 school year regarding religious literature or any course in which the study of the Bible is a primary component, including information related to guest speakers and teachers, as well as the cover, title, and copyright pages for any textbooks, curriculum or other instructional materials used. You state you will release some information to the requestor. You claim some of the submitted information is subject to section 552.027 of the Government Code. In addition, you claim some of the submitted information is excepted from disclosure pursuant to sections 552.102 and 552.122 of the Government Code and is protected by copyright law. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note you have redacted some information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue.

*Id.* §§ 552.301(a), (e)(1)(D). We understand the district has redacted a social security number under section 552.147(b) of the Government Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See id.* § 552.147(b). You have also redacted a post office box. However, you do not assert, nor does our review of the records indicate, you have been authorized to withhold a post office box number without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Therefore, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302.

You contend the district is not required to provide the submitted cover, title, and copyright pages because this information is commercially available. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

*Id.* § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. You state the requested information is commercially available. In this instance, however, the requestor has not requested a particular commercially available publication, but rather the requestor seeks the cover, title, and copyright pages for any textbooks, curriculum or other instructional materials used in the courses specified in the request. We note this information cannot be obtained by a member of the public if the member of the public is not aware of which information is used in the specified courses. The fact that commercially

available materials happen to be responsive to the request does not, in our view, bring such materials within the ambit of section 552.027. Accordingly, due to the nature of the request, we determine the information at issue is not subject to section 552.027, and must be released unless it falls within an exception to disclosure. *See id.* §§ 552.006, .021, .301, .302.

You contend the district cannot provide the submitted cover, title, and copyright pages to the requestor pursuant to the Federal Copyright Act, title 17 of the United States Code. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

Section 552.102(b) of the Government Code excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.* Upon review, we find the district must withhold the educational transcript under section 552.102(b) of the Government Code, except for the information that reveals the employee’s name, the degree obtained, and the courses taken.<sup>1</sup> *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor).

You also claim section 552.122 of the Government Code, which excepts from disclosure “a test item developed by an educational institution that is funded wholly or in part by state revenue[.]” Gov’t Code § 552.122(a). 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.” *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(a) 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); Open Records Decision No. 626 at 8 (1994).

You claim a portion of the remaining information consists of a test and quizzes, which are subject to section 552.122. You indicate the information at issue consists of questions

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

administered by a district faculty member to students. You contend these questions may be administered in the future. Based on your representations and our review of the information at issue, we have marked the information the district may withhold under section 552.122 of the Government Code. We conclude the remaining information you seek to withhold does not consist of or reveal test items and may not be withheld under section 552.122.

In summary, the district must withhold the educational transcript under section 552.102(b) of the Government Code, except for the information that reveals the employee's name, the degree obtained, and the courses taken. The district may withhold the information we have marked under section 552.122 of the Government Code. The remaining information must be released; however, any information protected by copyright may only be released in accordance with copyright law.

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](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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 458161

Enc. Submitted documents

c: Requestor  
(w/o enclosures)