



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2012

Ms. Pam Young Kaminsky
Attorney
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2012-16963

Dear Ms. Kaminsky:

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# 473273 (ORR 2012-13-145).

The Fort Bend Independent School District (the "district") received a request for specified tests. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.122 of the Government Code 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," 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 seek to withhold the submitted test questions and answer sheets under section 552.122 of the Government Code. You indicate these questions evaluate an individual's knowledge or ability in particular areas. You inform us the district anticipates using these questions in the future; thus, we understand you to argue that release of this information would compromise the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we conclude the submitted test questions qualify as test items for the purposes of section 552.122(a). Accordingly, the district may withhold the test questions under section 552.122(a). We find, however, the answer sheets neither constitute test items nor reveal the questions themselves. Accordingly, the answer sheets do not constitute test items under section 552.122(a) and may not be withheld on this basis. As you raise no additional exceptions for the answer sheets, they 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 473273

Enc. Submitted documents

c: Requestor
(w/o enclosures)