



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 9, 2013

Ms. Nancy Nelson  
Associate Vice President  
Employee Relations  
El Paso Community College  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2013-00532

Dear Ms. Nelson:

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# 475863 (ORR 12-10).

The El Paso Community College District (the "district") received a request for all study materials provided to students in the basic peace officer course. You state some information has been released to the requestor. You claim some of the submitted information is subject to section 552.027 of the Government Code. You claim the rest of the submitted information is excepted from disclosure under sections 552.110 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We understand the district has submitted a "representative sample" of information, which we assume 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 those records contain substantially different types of information than those submitted to this office.

Section 552.027 of the Government Code provides the Act does not require a governmental body to allow the inspection of information in a commercial publication purchased or acquired by the governmental body for research purposes if the publication is commercially available to the public. *See* Gov't Code § 552.027(a). You have submitted the cover and table of contents pages of two textbooks that you state are curricular materials purchased by the district for students enrolled in the basic peace officer course with funds paid by the students' tuition. You state the textbooks are commercially available from the publisher, Matthew Bender & Company, Inc. or local bookstores. Accordingly, we conclude the submitted textbooks are commercially available information that falls within the scope of section 552.027 and need not be released to the requestor.

You raise section 552.110 of the Government Code for the remaining information. We note section 552.110 is designed to protect the interests of third parties, not those of governmental bodies. Thus, we do not address your claim under section 552.110 of the Government Code.

Section 552.122(a) 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[.]" *Id.* § 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. *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); ORD 626 at 8. None of the remaining instructor developed materials constitute a test item for purposes of section 552.122(b). Therefore, the district may not withhold any of the remaining information under section 552.122.

In summary, the textbooks are subject to section 552.027 of the Government Code and need not be released to the requestor. The remaining 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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

Ref: ID# 475863

Enc. Submitted documents

c: Requestor  
(w/o enclosures)