



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1996

Mr. Gary W. Smith  
City Attorney  
City of Greenville  
P.O. Box 1049  
Greenville, Texas 75403-1049

OR96-0129

Dear Mr. Smith:

You have ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36387.<sup>1</sup>

The City of Greenville (the "city") received a request for the following information:

- 1) Civil Service Rule 143
- 2) Original Test or Score Sheet
- 3) Physical Agility Test Results
- 4) Oral Review Board Results and Recommendations

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<sup>1</sup>We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

In response to number 1, above, you provided the requestor access to a copy of chapter 143 of the Texas Local Government Code. In response to number 2, you provided the requested score card for the test administered by the city for beginning positions with the police department. In response to numbers 3 and 4, you provided the test results for the physical agility test and the results and recommendations of the oral review board.

Although it appears that the city has already complied with the request for information, you apparently are concerned that this requestor may actually be seeking a copy of the test *and* score sheet rather than a copy of the test *or* score sheet. You indicate the city does not have a copy of the test. You have provided correspondence indicating that the city has not been able to obtain a copy of the test from the company the city contracts with to administer the test.<sup>2</sup> You also assert that the test, if responsive, is exempted from disclosure pursuant to section 552.122 of the Government Code.

Section 552.002 of the Government Code provides in pertinent part:

(a) In this chapter, 'public information' means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

It is well established that the Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). On the other hand, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, generally the information relating to the task that has been assembled or maintained by the agent is subject to section 552.002. See Open Records Decision No. 518 (1989) and authorities cited therein.<sup>3</sup>

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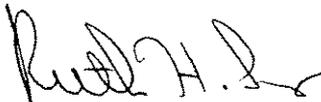
<sup>2</sup>You submitted a copy of the city's contract with the testing company that prohibits the city from providing others access to the company's testing information. The contract does not prohibit the company from providing the city with a copy of the testing information.

<sup>3</sup>You indicate that the test is copyrighted. Simply because information is copyrighted does not make it confidential. Open Records Decision No. 180 (1977) (copyrighted training materials are not deemed confidential under section 552.101). A governmental body normally must allow inspection of copyrighted materials unless another exception applies to the information. Attorney General Opinion JM-672 (1987). The custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Id.* 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. See Open Records Decision No. 550 (1990).

Section 552.303(b) provides that this office may determine whether a governmental body's submission of information is sufficient to render a decision. This office notified you of the requirement to submit a copy of the information at issue in order to evaluate the exception to disclosure raised by the city. However, you have not submitted to this office a copy of the requested information. Section 552.303(e) provides that if the requested information is not timely submitted, it is presumed to be public. Thus, the test at issue, if responsive to the request, is presumed public.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 36387

cc: Mr. James R. Hooten  
1403 Glendale  
Greenville, Texas 75401