



July 13, 2001

Ms. Cynthia J. Hill
Acting General Counsel
Texas General Services Commission
P.O. Box 13047
Austin, Texas 78711-3047

OR2001-3024

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149412.

The General Services Commission (the "commission") received a request for information relating to an examination that was administered to the requestor. You ask whether this and other information pertaining to the Certified Texas Purchaser ("CTP") and Certified Texas Procurement Manager ("CTPM") examinations is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

We first note that the majority of the submitted documents are not responsive to this request for information. The requestor seeks access to "my test." You inform this office that the requestor's CTP examination materials are submitted as Exhibit "C." Therefore, this decision addresses only the information contained in Exhibit "C." We express no opinion with respect to the CTP and CTPM examination materials submitted as Exhibit "B."

We also note that you ask "whether the Commission may withhold the copy of the examinee's test and the examinee's answers from the examinee and from the examinee's review." Chapter 552 of the Government Code does not permit selective disclosure of public information. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987) (stating that governmental body cannot make "selective disclosure," so that information that does not fall within a specific exception to disclosure must be released to any person who requests it). Furthermore, the release or withholding of public information may not be based on the requestor's motive or purpose in seeking access to the information. *See* Gov't Code §§ 552.221(a), .222(a), .223; Open Records Decision No. 542 at 4 (1990) (stating that statutory predecessor prohibits inquiry by governmental body into requestor's motives and requires governmental body to treat each request for information uniformly).

Thus, we consider whether the requestor's examination materials are excepted from *public* disclosure under section 552.122. Section 552.122(b) excepts from disclosure "a test item developed by a licensing agency or governmental body[.]" In Open Records Decision No. 626 (1994), this office determined that 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(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where the release of a "test item" 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 inform this office that the CTP examination was created under chapter 2155 of the Government Code and is mandatory for all state agency purchasing personnel who are required to obtain certification. You explain that the purpose of this examination is to measure an employee's level of knowledge of state governmental purchasing procedures and to evaluate an employee's ability to learn and apply state purchasing rules and regulations. You state that the CTP examination was developed under the commission's direction and authorization, that the commission owns the examination, and that it is administered for the commission by the University of Texas at Austin. You also inform us that there is only one form of the CTP examination and that the commission re-uses the testing materials in administering the examination to first-time examinees and others who are retaking the test.

Based on your representations and our review of the submitted information, we find that the CTP examination questions in Exhibit "C" constitute "test items" under section 552.122 of the Government Code and that the release of these questions would compromise the effectiveness of future examinations. We also find that the answers to the CTP examination questions in Exhibit "C" tend to reveal the questions themselves. Accordingly, we conclude that the CTP examination questions and answers in Exhibit "C" are excepted from public disclosure under section 552.122 of the Government Code. We have marked the information that the commission may withhold under section 552.122. We also conclude, however, that the other documents in Exhibit "C" are not excepted from disclosure under section 552.122 and must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

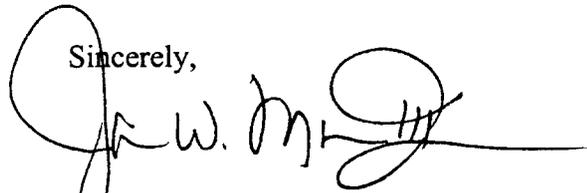
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 149412

Enc: Marked documents

c: Ms. Diane White
2801 52nd Street
Lubbock, Texas 79413
(w/o enclosures)