



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 30, 2003

Ms. Hadassah Schloss
Open Records Administrator
Texas Building and Procurement Commission
P.O. Box 13047
Austin, Texas 78711

OR2003-3664

Dear Ms. Schloss:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181906.

The Texas Building and Procurement Commission (the "TBPC") received a request for the requestor's Certified Texas Purchaser ("CTP") examination. You claim that the requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.¹

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). 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 release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records

¹The requestor also asks the TBPC to "please verify that the correct scantron was used to evaluate my test." We note that chapter 552 of the Government Code does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). The governmental body must make a good-faith effort, however, to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

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 us that the CTP examination was developed under chapter 2155 of the Government Code and is a mandatory examination for all state agency purchasing personnel who are required to receive certification, including agencies that are exempted from the purchasing authority of the TBPC. You also state that a state agency employee who is required to receive certification may not make certain purchases for the employing agency unless the employee has received the required training and certification recognized by the TBPC. Based on your representations and our review of the submitted information, we find that the CTP examination questions in Attachment B constitute “test items” under section 552.122(b) 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 Attachment B tend to reveal the questions themselves. Therefore, we conclude that the CTP examination questions and answer choices in Attachment B are excepted from disclosure under section 552.122 of the Government Code. The TBPC has not demonstrated, however, that this exception is applicable to any of the remaining information. We have marked the information that the TBPC may withhold under section 552.122.

We note, however, that the remaining information includes a credit card number. This information is confidential under section 552.136 of the Government Code, which provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. We have marked the information that you must withhold under section 552.136.

In summary, the TBPC may withhold the marked information that is excepted from disclosure under section 552.122 of the Government Code. The TBPC must withhold the marked information that is confidential under section 552.136. The rest of the submitted information must be released.

You also have requested the issuance of a previous determination that would allow the TBPC to withhold the CTP and Certified Texas Procurement Manager ("CTPM") examinations from public disclosure without the necessity of asking this office for a decision under section 552.301 of the Government Code. *See* Open Records Decision No. 673 (2001) (delineating elements of two types of previous determinations under Gov't Code § 552.301(a)). As noted above, however, the question of whether information comes within the scope of section 552.122(b) must be determined on a case-by-case basis. *See* Open Records Decision No. 626 at 6 (1994). For this reason, we decline to issue a previous determination at this time. 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).

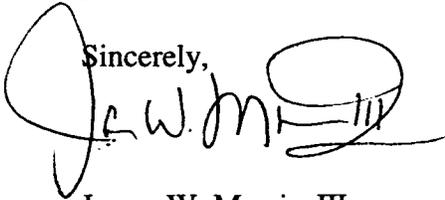
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 a stylized "M".

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

JWM/sdk

Ref: ID# 181906

Enc: Submitted documents

c: Ms. Connie Knesek
Texas Parks & Wildlife Department
4200 Smith School Road
Austin, Texas 78744
(w/o enclosures)