



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2007

Ms. Sylvia F. Hardman
General Counsel
Division for Rehabilitation Services
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard, Suite 300
Austin, Texas 78756

OR2007-00620

Dear Ms. Hardman:

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# 269233.

The Department of Assistive and Rehabilitative Services (the "department") received a request for the requestor's test scores and level 3 test taken on August 11, 2006. You state that you have released the test scores to the requestor. You claim that the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or 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. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Additionally, when answers to test questions might reveal the substance of the questions themselves, the answers may be withheld from disclosure under section 552.122(b). *See id.* at 8.

You contend that the submitted videotaped examination is excepted from disclosure under section 552.122(b). You state that “[t]he substantive material in the videotape . . . is the [department]’s standard means by which an individual’s knowledge and ability in sign language interpretation is evaluation. You further state that “the release of such information ‘might compromise the effectiveness of future examinations’ by providing an unfair advantage to the recipient of the videotaped exam.” Having considered your arguments and reviewed the submitted information, we agree that the submitted videotape constitutes a “test item” as contemplated by section 552.122(b). Accordingly, the department may withhold the submitted information pursuant to section 552.122(b) of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

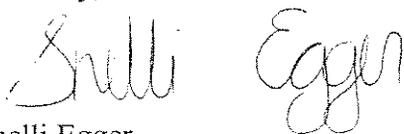
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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 that reads "Shelli Egger". The signature is written in a cursive style with a large initial "S" and a long, sweeping underline.

Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 269233

Enc. Submitted documents

c: Ms. Cheryl D. Garrett
912 Chickenfield Road
Whitewright, Texas 75491
(w/o enclosures)