



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2010

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2010-15527

Dear Mr. Meitler:

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# 396496 (TEA PIR# 13598).

The Texas Education Agency ("TEA") received a request for five categories of information relating to the Texas Bilingual Target Language Proficiency Test (the "BTLPT"). You state that information responsive to parts one, two, four, and five of the request either has been or will be released, to the extent such information exists. You claim that the submitted information responsive to part three of the request is excepted from disclosure under section 552.122 of the Government Code. You also believe the submitted information may implicate the proprietary interests of Educational Testing Service ("ETS"). You inform us that ETS was notified of this request for information and of its right to submit arguments to this office as to why the submitted information should not be released.¹ We received correspondence from an attorney for ETS. We have considered all the submitted arguments

¹See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

and reviewed the information you submitted.² We also have considered the comments we received from the requestor.³

Section 552.122 of the Government Code exempts from 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 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 TEA has contracted with ETS to develop, administer, and score standardized educator certification examinations. You state that the requestor seeks access to written responses that are utilized to train ETS employees who score the BTLPT and an explanation of how those responses are scored. You explain that the questions utilized for such training are actual test questions that are currently used, and will continue to be used, for educator certification assessments. You also explain that the written responses used to train BTLPT scorers are actual responses submitted by examinees in previous administrations of the examination. You state that the submitted written responses, the instructional information or "prompt notes" provided to the scorers, and the comments/rationale for each of the four benchmark scored responses reveal the substance of the questions themselves. You contend that the submitted information consists of test items that are utilized to measure educators' knowledge and ability in a particular area. You also contend that the release of this information would compromise the effectiveness of future examinations. Based on your representations and our review of the information at issue, we find that the submitted information constitutes test items for the purposes of section 552.122(b). We therefore conclude that TEA may withhold the submitted information under section 552.122 of the Government Code. As we are able to make this determination, we need not address ETS's arguments against disclosure.

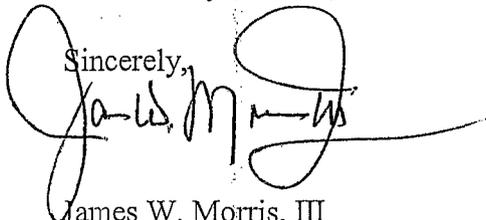
²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes TEA to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not 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, 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is stylized and includes a long horizontal flourish extending to the right.

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

JWM/em

Ref: ID# 396496

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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