OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

September 24, 2002

Ms. Juliet U. King
Legal Counsel
Texas Building and Procurement Commission
P.O. Box 13047
Austin, Texas 78711

OR2002-5360

Dear Ms. King:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169276.

The Texas Building and Procurement Commission (the "commission") received a request for the Certified Texas Purchaser ("CTP") exam taken by the requestor. The requestor goes on to say that if the commission cannot supply her with a copy of the test, "can you at least go over my test and tell me what is the topic I need to focus on more." This office has stated on numerous occasions that the Public Information Act does not require a governmental body to answer factual questions or perform legal research. *See, e.g.,* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). A governmental body must only make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990). 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) 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 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 commission. 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 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 Attachment B tend to reveal the questions themselves. Accordingly, we conclude that the CTP examination questions and answer choices in Attachment B 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 Attachment B are not excepted from disclosure under section 552.122 and must be released to the requestor.

Finally, you have asked that we issue to the commission a previous determination allowing the commission to withhold the CTP and Certified Texas Procurement Manager exams. As noted above, 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). For this reason, we decline to issue a previous determination that would grant the commission the authority to withhold these types of exams categorically.

Accordingly, 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

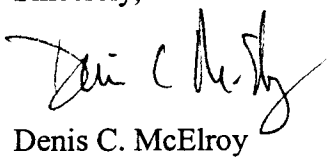
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge 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 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,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 169276

Enc. Submitted documents

c: Ms. Elsa Morfin
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(w/o enclosures)