OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 23, 2003

Ms Ylise Y. Janssen
Senior School Law Attorney
Austin I.S.D.
111 West Sixth Street
Austin, Texas 78703

OR2003-3506

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181590.

The Austin Independent School District (the "district") received a request for "copies of the reading 'Benchmark' tests for elementary grades supplied to [the district] by Lightspan." 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 reviewed the submitted sample of information.[1]

Section 552.122(a) of the Government Code provides: "A test item developed by an educational institution that is funded wholly or in part by state revenue is excepted from the requirements of Section 552.021." This provision provides express protection for curriculum objectives and test items. Open Records Decision No. 537 (1990). We agree that the district is an educational institution and that the requested benchmark tests were developed by the district. Thus, upon reviewing the submitted documents, we agree that the district may withhold the requested information under section 552.122.

[1] We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note that the requestor argues that he is entitled to the requested information under section 26.006 of the Education Code, which provides in relevant part:

> (a) A parent is entitled to:
>
> > (1) review all teaching materials, textbooks, and other teaching aids used in the classroom of the parent's child; and
> >
> > (2) review each test administered to the parent's child after the test is administered.

Educ. Code § 26.006. The requestor argues that the requested information consists of teaching materials and teaching aids. However, we have concluded that the requested information consists of test items. The district states that the requested tests have not yet been administered to the requestor's child. Therefore, the requestor is not entitled to the requested information under section 26.006.

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).

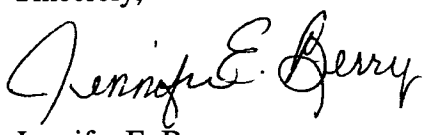
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 181590

Enc: Submitted documents

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