



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2009

Ms. Cheryl T. Mehl  
Schwartz & Eichelbaum  
Wardell Mehl and Hansen, P.C.  
4201 West Parmer Lane, Suite A-100  
Austin, Texas 78727

OR2009-18041

Dear Ms. Mehl:

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# 365710.

The Wylie Independent School District (the "district"), which you represent, received a request for 27 categories of information relating to facility use and Bible courses. You state that some of the requested information either has been or will be released. You contend that the Act does not require the district to make copies of some of the submitted information available to the requestor. You claim that the rest of the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered your arguments and reviewed the information you submitted.<sup>1</sup>

We understand you to contend that the information submitted as Exhibit 2 is subject to section 552.027 of the Government Code. This section provides that the Act does not require a governmental body to allow the inspection of information in a commercial publication purchased or acquired by the governmental body for research purposes if the publication is commercially available to the public. *See* Gov't Code § 552.027(a). You have submitted, as Exhibit 2, the cover pages of a textbook and of other publications that you indicate are

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district 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).

curricular materials.<sup>2</sup> You state that the textbook is commercially available. The curricular materials also appear to be commercially available. Accordingly, we conclude that the textbook and curricular materials are commercially available information that falls within the scope of section 552.027 and need not be released to the requestor.

Next, we address your claim under section 552.122 of the Government Code for the information submitted as Exhibit 3. Section 552.122(a) excepts from disclosure “[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]” Gov’t Code § 552.122(a). 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(a) 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); ORD 626 at 8.

You inform us that Exhibit 3 consists of tests that are administered in an elective course and that are used from year to year. You contend that these tests are designed to measure a student’s ability or knowledge in the area of an elective Bible class. You indicate that the tests were developed by the district. Based on your representations and our review of the information at issue, we conclude that the district may withhold the information in Exhibit 3 under section 552.122(a). *See* Open Records Decision No. 537 at 2 (1990) (statutory predecessor to Gov’t Code § 552.122 provided express authority to withhold examination questions and answer keys).

In summary: (1) Exhibit 2 consists of commercially available information that falls within the scope of section 552.027 of the Government Code and need not be released to the requestor; and (2) the district may withhold Exhibit 3 under section 552.122 of the Government Code.

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.

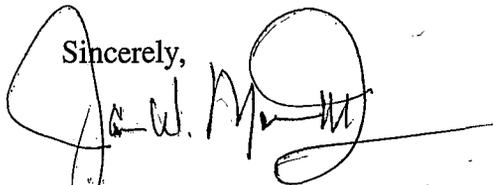
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>2</sup>We understand that the cover pages are representative of the textbook and the other publications as a whole.

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 "J.W. Morris, III". The signature is written in a cursive style with a large, looping initial "J" and "M".

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

JWM/sdk

Ref: ID# 365710

Enc: Submitted documents

c: Requestor  
(w/o enclosures)