



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1994

Mr. Robert E. Hager
Nichols, Jackson, Kirk & Dillard, L.L.P.
Attorneys and Counselors at Law
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR94-411

Dear Mr. Hager:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.¹ We assigned your request ID# 22990.

The City of Coppell (the "city"), which you represent, has received a request for information relating to the city's employee performance evaluation system. Specifically, the requestor seeks "copies of city evaluation system," but "only that part that shows how each category is valued or weighted." In addition, the requestor seeks "a copy of the instructions of how this system is done," including "(1) numerical value for each category [and] subcategory [and] (2) instruction information." You seek to withhold the requested information under sections 552.111 and 552.122 of the Government Code.

Section 552.111 of the Government Code excepts information that constitutes an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined section 552.111 and held that it excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6. In addition, section 552.111 does not encompass purely factual information. *Id.*

You have submitted to us for review information indicating the general criteria by which city employees, broken down by supervisory and non-supervisory employees, are rated. These rating scales indicate, *inter alia*, the "Point Value" employees must achieve in order to merit unsatisfactory, below average, average, above average, and excellent ratings. In addition, you have submitted the portions of the "City of Coppell Standard Operating Procedures" relating to the performance evaluation system and city documents titled "Employee Essential Job Duties, Standards of Performance, & Goals," "Employee Performance Report," "Employee Evaluation Form," "Employee Completion of Probation Report," and a list of general criteria by which employee's are evaluated.² This information contains no advice, recommendations, opinions, and other material reflecting the policymaking processes of the city. We conclude, therefore, that section 552.111 does not except the submitted information from required public disclosure.

You also claim that the requested information is excepted from required public disclosure by section 552.122 of the Government Code, which excepts

(a) A curriculum objective or test item developed by an educational institution that is funded wholly or in part by state revenue . . . [and;]

(b) A test item developed by a licensing agency or governmental body.

Gov't Code § 552.122.³ In Open Records Decision No. 626 (1994) (copy enclosed), 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. *Id.*

²We note that the act specifically makes public "a statement of the general course and method by which an agency's functions are channeled and determined, including the nature and requirements of all formal and informal procedures." Gov't Code § 552.022(8).

³The Seventy-third Legislature deleted the reference to "curriculum objectives" in former section 3(a)(22), V.T.C.S. article 6252-17a. See Acts 1993, 73d Leg., ch. 347, § 8.30, at 1557. This amendment is not reflected in the codification of former section 3(a)(22) as section 552.122 of the Government Code.

We have examined the information for which you seek section 552.122 protection. We conclude that it does not include "test items" within the meaning of section 552.122. Accordingly, you may not withhold the requested information under section 552.122 of the Government Code. The city must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosures: Open Records Decision No. 626
Submitted Documents

Ref.: ID# 22990

cc: Mr. Scott Baird
805 Summer Creek
Lewisville, Texas 75067-5339
(w/o enclosure)