



June 29, 1999

Ms. Tracy A. Pounders
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-1802

Dear Ms. Pounders:

You ask whether certain information is subject to required public disclosure under the, Texas Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 125894.

The City of Dallas (the "city") received a request for all documents related to its police and fire department assessment centers since their inception, including documents related to the bidding process for the centers. You assert that the questions and supporting materials the city uses to measure practical capabilities and knowledge of candidates for promotion in the city's police and fire departments, information you refer to as "assessment centers," are excepted from required public disclosure. In your April 27, 1999 correspondence to this office, you raise sections 552.101, 552.102, 552.103, 552.107(1), 552.111 and 552.305 of the Government Code, but do not explain the applicability of these provisions to the information at issue. In your May 4, 1999 brief to this office, with the exception of section 552.111, you do not mention these provisions. We therefore cannot conclude that sections 552.101, 552.102, 552.103, 552.107(1) and 552.305 are applicable to the information. Gov't Code § 552.301(b)(1); *see* Open Records Decision No. 542 (1990) (burden is on governmental body to establish applicability of exceptions it raises). In your May 4, 1999, brief, you also raise section 552.122 of the Government Code. We will therefore consider the applicability of sections 552.111 and 552.122 of the Government Code to the information. You have submitted to this office what you say is a representative sample of the information you seek to withhold.¹

¹In reaching our conclusion here, 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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 assume that the city has released to the requestor all other responsive information to this request, if any, for which the city does not raise an exception to disclosure.

Your section 552.122 claim was raised for the first time on May 4, 1999. The city received the request for information on April 14, 1999. Thus, the city failed to raise section 552.122 within the ten-day deadline the Act provides for raising exceptions to disclosure. Gov't Code 552.301. Exceptions that protect the interests of only the governmental body are waived when the governmental body fails to raise the exception within the ten-day deadline. *See, e.g.,* Open Records Decision Nos. 630 (1994), 592 (1991) 549 (1990). Section 552.122 preserves the integrity of a governmental body's tests it administers and serves to avoid compromising the effectiveness of future examinations. *See* Open Records Decision No. 626 (1994). Consequently, as the exception serves only the governmental body that raises it, the city has waived section 552.122.

Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). An agency's policymaking function, 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. *See id.* at 5-6; *see also* *Garland v. Dallas Morning News*, 969 S.W.2d 548 (Tex. App.—Dallas, May 13, 1998, pet. granted) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.—Houston [14th Dist.] 1996), *writ denied per curiam*, 41. Tex. Sup Ct. J. 575 (1998)). This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* Nor does it apply to information about the implementation of existing policy of a governmental body. *See* *Garland v. Dallas Morning News*, 969 S.W.2d 548 (Tex. App.—Dallas, May 13, 1998, pet. granted)

The city argues that the assessment centers

consist of the opinions and recommendations of City officials as to the type of practical capabilities and knowledge candidates for promotion in the Dallas Police and Fire Departments should have. This information is central to the ongoing policy making functions of the City with regard to the qualifications of its officers, and are subject to change; release of the information in Exhibit B would thwart the City's ongoing policy making process in this area, and would compromise the effectiveness of future policy assessments.

We have reviewed the city's submissions. We do not believe the information consists of advice, opinion or recommendation concerning the city's policymaking process. Rather, the information shows the city's existing methods for qualifying police officers for promotion. We, therefore, conclude that the city may not withhold the information from the requestor based on section 552.111 of the Government Code.

You also suggest that the city is entitled to rely on Open Records Letter No. 99-1119 (1999) as a prior determination. We disagree. Section 552.301 of the Act exempts a governmental body from the requirement of asking the attorney general for a decision in order to withhold requested information from disclosure if the attorney general has issued a previous determination about whether the information falls within a raised exception. This means that a governmental body need not request another decision from the attorney general under section 552.301(a) if the governmental body previously requested and received a determination from the attorney general concerning the precise information at issue in the pending request. The attorney general is authorized to determine what constitutes a previous determination. *Houston Chronicle Publ'g Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989). We do not believe that the information at issue here is the precise information at issue in Open Records Letter No. 99-1119. The information at issue in Open Records Letter No. 99-1119 was the examination questions given by the city's civil service department on December 8, 1998 for the position of lieutenant, while here you seek to withhold all of the city's assessment centers. Thus, as the earlier ruling cannot serve as a previous determination for the information now at issue, the city is not excused from complying with the requirements of section 552.301.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/eaf

Ref.: ID# 125894

Encl. Submitted documents

cc: Mr. Dave Michaels
Dallas Morning News
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(w/o enclosures)