



August 9, 1999

Mr. Jesus Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR99-2241

Dear Mr. Toscano:

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# 126381.

The City of Dallas (the "city") received a request for specific categories of information relating to the 1999 Police Lieutenant Examination and Assessment Center. You state that some of the requested information will be released. You claim, however, that the submitted examination and assessment materials are excepted from disclosure under sections 552.111 and 552.122 of the Government Code. You also contend that a portion of the submitted records are not subject to the act and need not be disclosed to the requestor. We have considered your arguments and have reviewed the sample information.¹

Initially, we address your assertion that since the assessors' notes are not maintained by the city, the notes are not public information subject to the act. We recognize that the act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). However, section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) *for a governmental body and the governmental*

¹We 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.

body owns the information or has a right of access to it." (Emphasis added.) Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. See Open Records Decision No. 462 (1987); cf. Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Public Information Act are: 1) information collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information). Where a third party has prepared information on behalf of a governmental body, the information is subject to the Public Information Act, even though it is not in the governmental body's custody. Open Records Decision No. 558 at 2 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure. Open Records Decision No. 518 at 3 (1989). You explain that the assessors were employed to test the suitability of candidates for promotion in the city's police department. In this instance, the assessors are acting as the city's agent in performing a task that otherwise would be performed by the city. The notes made by the assessors relate to that task. Consequently, we believe that the notes are subject to disclosure under the act.

Next, you argue that Exhibits B and D are excepted from disclosure under section 552.122. Section 552.122(b) excepts from disclosure test items 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. 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). 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).

You have submitted to this office a memorandum from Management Scientist II, which conducted the assessments. The memorandum describes the assessment as consisting of two parts: the "In-Basket and Problem Analysis Exercises" and the "Oral Resume Exercise." Based on the descriptions contained in the memorandum, we conclude that the "In-Basket and Problem Analysis Exercises" constitute "test items" for purposes of section 552.122(b). Further, after reviewing the assessors' notes of the candidates' responses, we believe that the requested notes contain significant clues as to the content of those test items or the desired responses and thus may be withheld from public disclosure pursuant to section 552.122(b).

On the other hand, the memorandum from Management Scientists II does not argue that the "Oral Resume Exercise" constitutes test items, nor does it appear from the assessors' notes

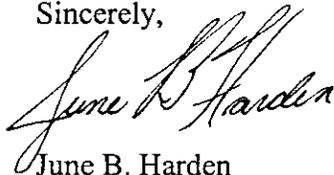
from this portion of the assessment that the candidates are being tested for their knowledge or ability in a particular area. Rather, judging from the assessors' notes, it appears that the responses to this portion of the assessment address the candidate's overall suitability for promotion rather than his or her knowledge or ability to perform assigned work. Such questions and answers are not excepted from public disclosure under section 552.122(b). The department must, therefore, release the assessors' notes regarding the candidates' responses to the "Oral Resume Exercise."

As for the contents of Exhibit D, we agree that this information is a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." Consequently, the city may withhold the contents of Exhibit D under section 552.122(b).

Finally, you argue that the information in Exhibit C may be withheld under section 552.111. Section 552.111 excepts "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 the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's 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 (1993). As the information at issue necessarily involves personnel matters, we conclude that the material may not be withheld under section 552.111. Exhibit C must, therefore, be released.

We are resolving this matter with an 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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 126381

Encl. Submitted documents

cc: Mr. Kenny Kirby
Dallas Patrolmen's Union, Local 588
1414 North Washington
Dallas, Texas 75204
(w/o enclosures)