



July 26, 2000

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
Office of City Attorney  
City of Dallas  
2014 Main Street, Room 206  
Dallas, Texas 75201

OR2000-2829

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137394.

The City of Dallas (the “city”) received a request from a city Fire Department employee for his Fire Operations Lieutenant Oral Assessment File. You claim that you have released a portion of this file but that you seek to withhold certain responsive information which you have submitted to this office for review, identified as exhibits B, C, and D. You assert that the submitted information is excepted from disclosure under section 552.122(b) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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).

Issues 1-B and 2-B in Exhibit B, ask hypothetical questions that do not appear to evaluate a person’s knowledge or ability in a particular area. These items must be released. Issue 3-B

in this exhibit does appear to evaluate a person's knowledge or ability in a particular area. This item may be withheld under section 552.122.

Exhibit C consists of the handwritten responses of the requestor. From our review of these materials we conclude that release of these materials does not reveal the content of any "test item," nor would it compromise the effectiveness of future examinations. This information must be released.

Exhibit D consists of a reviewer's evaluation of the requestor's "Ability to Relate to Others/Sensitivity/Concern for Welfare of Others/Tact/Diplomacy." These are apparently areas of suitability for the job, rather than evaluations of a person's knowledge or ability in a particular area. This information must be released.

In summary, Issue 3-B in Exhibit B may be withheld. All other submitted information must be released. 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).

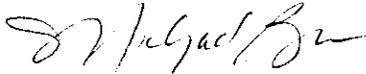
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. 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,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ljp

Ref: ID# 137394

Encl Submitted documents

cc: Mr. Bryan Russell  
148 Buffalo Creek  
Crandall, Texas 75114  
(w/o enclosures)