



June 4, 2002

Mr. Roland Castaneda
General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2002-3004

Dear Mr. Castaneda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163849.

The Dallas Area Rapid Transit (“DART”) received a written request for, among other things, “a complete copy of the Dart Police Department hiring requirements.”¹ You have submitted to this office documents responsive to this request. You contend that the submitted information is excepted from required public disclosure pursuant to sections 552.110 and 552.122 of the Government Code.

Because your contentions regarding section 552.110 are the more inclusive, we will address them first. You contend that submitted documents constitute DART’s “trade secrets” and thus are excepted from required public disclosure pursuant to section 552.110(a) of the Government Code, which protects from public disclosure “[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision.” The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 at 2 (1990). Section 757 provides that a trade secret is “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know

¹You state that the other requested information has been provided to the requestor.

or use it.” RESTATEMENT OF TORTS § 757 cmt. b (1939). In determining whether particular information constitutes a trade secret, this office considers the Restatement’s definition of trade secret as well as the Restatement’s list of six trade secret factors.² *Id.*

You state that the “evaluation and review materials” you submitted to this office were developed by DART “for the purpose of screening peace officer candidates.” Consequently, these materials do not consist of information “obtained from a person” for purposes of section 552.110(a). Furthermore, although you indicate that these materials are of great importance to DART, you have not demonstrated, nor does this office believe, that DART uses the submitted materials “to obtain an advantage over competitors who do not know or use it.” Accordingly, we conclude that DART may not withhold the requested information as trade secrets under section 552.110 of the Government Code.

You also seek to withhold some of the materials you submitted to this office pursuant to section 552.122(b) of the Government Code, which protects a “test item developed by a . . . governmental body.” Although you do not make clear the precise documents for which you raise this exception, we note that the submitted materials contain interview questions. Section 552.122(b) is applicable only where the test item constitutes a “standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” Open Records Decision No. 626 at 6 (1994). This exception does not apply to evaluations of an employee’s overall job performance or suitability. *See id.* at 6. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *See id.*

After reviewing the submitted interview questions and the criteria by which the applicants’ response to those questions would be judged, we conclude that the submitted interview questions are not test items, but rather merely serve as a means by which DART may evaluate applicants’ overall suitability for employment. Consequently, the interview questions and the interview guidelines are not excepted from public disclosure pursuant to section 552.122(b). Accordingly, we conclude that the submitted information must be released to the requestor in its entirety.

²The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: (1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company’s] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/sdk

Ref: ID# 163849

Enc: Submitted documents

c: Mr. Lee Bush
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(w/o enclosures)