

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 7, 2004

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla, Room 7BN
Dallas, Texas 75201

OR2004-3773

Dear Ms. Silver:

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#201226.

The City of Dallas (the "city") received a request for information pertaining to the most recent promotional examination for the rank of Fire Battalion/Section Chief. You state that the city will release some responsive information to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

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.

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.

Id. at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

You advise that the information in Exhibit B consists of test assessors' notes for the in-basket exercise, tactical exercise, personnel problem and oral presentation that are utilized by the city to measure the practical capabilities and knowledge of candidates for promotion in the fire department. You advise that the information in Exhibit C consists of the In-Basket Overall Behaviorally Anchored Rating Scales ("BARS"), which are analogous to a "teacher's manual" for the assessors because they reveal unique information about the test questions, suggested answers, and criteria for grading the test questions. You further explain that the test questions are re-used verbatim, or with only minor changes, on an on-going basis to provide for consistent evaluations of candidates and are an important component in the promotional examination process. You argue that release of the assessors' notes from the examination and the BARS will reveal the subject matter of the test questions and will permit candidates to reconstruct the test questions. We note, however, that you have not submitted the actual exercises or test questions. Therefore, we have no basis for determining whether the exercises or test questions are in fact "test items" as contemplated by section 552.122(b). It follows that we have no basis for determining whether the assessors' notes pertaining to the examination or the BARS would reveal the subject matter of "test items." As such, we have no basis to find that the assessors' notes or the BARS are excepted from disclosure under section 552.122(b). Accordingly, the city must release Exhibits B and C to the requestor.

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

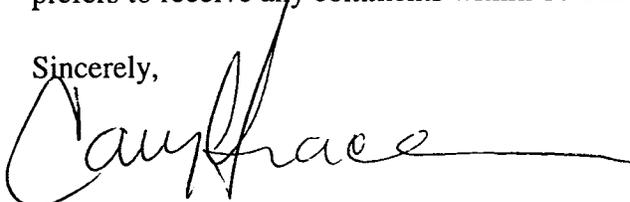
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 Dep't of Pub. 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,

A handwritten signature in cursive script that reads "Cary Grace". The signature is written in black ink and is positioned above the typed name.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/lmt

Ref: ID# 201226

Enc. Submitted documents

c: Mr. Steven D. Coffman
5222 Meadow Crest
Dallas, Texas 75229
(w/o enclosures)

AUG 03 2006

At 8:56 A. M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. GV401225

CITY OF DALLAS, Plaintiff,	§	IN THE DISTRICT COURT OF
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL OF TEXAS, Defendant.	§	201 ST JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff City of Dallas and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestor, Steven D. Coffman, was sent reasonable notice of this setting and of the parties' agreement that the City may withhold some of the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of his intention to intervene. Neither the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. Portions of the Behaviorally Anchored Rating Scales for the 2004 Promotional Examination for Fire Operations Battalion Chief ('04 Battalion Chief BARS), specifically, the information marked on Bates Nos. COD 0000401-414, 416, 419, 422-426, and 428-434, and Bates Nos. 0000020-28, are excepted from disclosure by Tex. Gov't Code Ann. § 552.122(b).

2. The City may withhold the information at issue from the requestors.

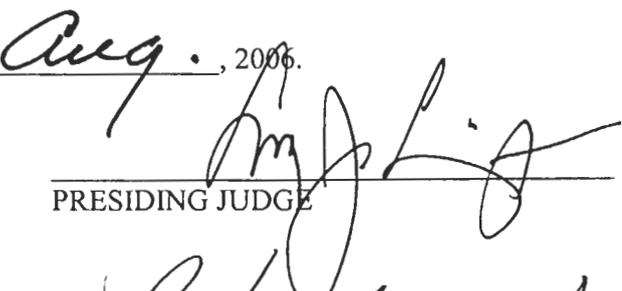
3. The remaining information at issue, including Bates Nos. COD 0000399-400, 415, 417-418, 420-421, 427, and 435-436, and Bates Nos. 0000019, 29-31, of the '04 Battalion Chief BARS, and the unmarked information on the pages enumerated in Paragraph 1 of this Judgment, is not excepted from disclosure under the PIA. If it has not already done so, the City shall release this information to the requestor promptly upon receipt by the City of a copy the Agreed Final Judgment signed by the Court.

4. All costs of court are taxed against the parties incurring the same;

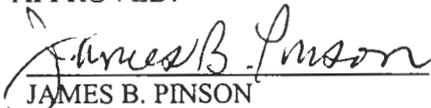
5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 3 day of Aug., 2006.


PRESIDING JUDGE

APPROVED:


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