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

November 29, 2004

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2004-10023

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# 213522.

The City of Dallas (the "city") received nine requests for information pertaining to the August 2004 promotional examination for the rank of Fire Operations Lieutenant. You inform us that the city is withdrawing its request for a decision with respect to the assessors' notes, because the city has released this information to the requestors. Accordingly, this ruling does not address the information that has been released. You claim that the information that has not been provided to the requestors is excepted from disclosure under section 552.122 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). 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 Exhibits T and U consist of the handwritten responses of two of the requestors to the personnel problem, policy change, and tactical exercises that are utilized by the city to measure the practical capabilities and knowledge of candidates for promotion in the fire department. We note that you have submitted a copy of these exercises, which you claim are test items, as Exhibit S.[1] After carefully reviewing Exhibit S, we conclude that only the tactical exercise evaluates the candidate's knowledge or ability in a particular area. We find, however, that the personnel problem exercise and the policy change exercise do not test an individual's knowledge or ability in a particular area. We therefore conclude that only the requestors' handwritten response to the tactical exercise may be withheld from Exhibits T and U pursuant to section 552.122(b) of the Government Code. The city must release the remaining information in Exhibits T and U to their specific requestors.

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).

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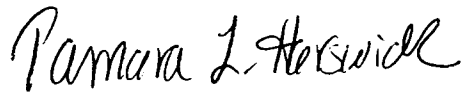
[1]We note your assertion that the questions submitted as Exhibit S were not requested by any of the requestors, and thus, you do not seek to withhold Exhibit S under section 552.122(b).

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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 213522

Enc. Submitted documents

c: Mr. D. J. Milan
449 Timberbrook Drive
Reno, Texas 75462

Mr. C. J. Mikklesen
3309 St. Cloud Circle
Dallas, Texas 75229
(w/o enclosures)

Filed in The District Court
of Travis County, Texas

AUG 03 2006

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

CAUSE NO. GV404142

CITY OF DALLAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
Defendant.	§	98th 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 requestors, D. J. Milan and C. J. Mikkelsen, were sent reasonable notice of this setting and of the parties' agreement that the City may withhold some of the information at issue; that the requestors were also informed of their right to intervene in the suit to contest the withholding of this information; and that the requestors have not informed the parties of their intention to intervene. Neither requestor has 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. Milan and Mikkelsen's responses to the personnel and policy change problems in the Assessment Center portion of the 2004 Promotional Examination for Fire Lieutenant (Exhibits T and U to the City's original submission to the Attorney General) are excepted from disclosure by

Tex. Gov't Code Ann. § 552.122(b). The City may withhold this information from the requestors.

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

3. All relief not expressly granted is denied; and

4. 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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