



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2007

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

OR2007-14121

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# 293175.

The City of Dallas (the "city") received a request for the requestor's examination responses related to the Dallas Fire and Rescue Captain Assessment Center. You claim that the submitted 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.

Initially, the city informs this office that the information contained in Exhibit C is not responsive to the present request. Information that is not responsive to this request need not be released. Moreover, we do not address such information in this ruling.

Section 552.122 of the Government Code excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). 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. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* 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). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); Open Records Decision No. 626 at 8 (1994).

The city explains that the information in Exhibit D consists of the requestor's written responses to the personnel problem exercise, policy exercise, and operational exercise. You state that the release of the written responses will reveal the subject matter of the questions and permit the candidates to reconstruct the questions. Further, you state that release of the written responses will affect the city's ability to assess the abilities of candidates in a consistent manner and will compromise the effectiveness of future candidate assessments. After reviewing the submitted information and your arguments, we find that the submitted written responses reveal the questions themselves. Therefore, pursuant to section 552.122 of the Government Code, the department may withhold the submitted information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 293175

Enc. Submitted documents

c: Ms. Rebecca Mathews
11211 Cotillion Court
Dallas, Texas 75228
(w/o enclosures)