



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 24, 2009

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
City of Dallas  
1500 Marilla, Room 7DN  
Dallas, Texas 75201

OR2009-11869

Dear Mr. Ernst:

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# 353347.

The City of Dallas (the "city") received a request for information regarding the requestor's performance on the 2009 Fire Captain assessment and a copy of the Fire Captain eligibility list. You state some of the requested information will be provided to the requestor, but claim 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.

Section 552.122(b) of the Government Code 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. *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 information at issue, Exhibits D and E, consists of the requestor's written responses and the answer keys to the personnel problem test exercise, the policy test exercise, and the tactical test exercise for the 2009 Dallas Fire-Rescue Department Captain Assessment Center. You inform us the city uses these exercises to evaluate the qualifications of candidates for promotion in the fire department. You state the exercises "are re-used verbatim, or with only minor changes, on an on-going basis to provide for consistent evaluations of candidates[.]" You also explain the release of the written responses and answer keys will reveal the subject matter of the exercises, permit candidates to reconstruct the exercises, and thereby compromise the effectiveness of future assessments. Having reviewed the submitted information and your arguments, we find the exercises in the assessment center are test questions under section 552.122(b), and the written responses and answer keys reveal the exercises themselves. We therefore conclude the city may withhold Exhibits D and E from disclosure under section 552.122(b) of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Karen Hattaway  
Assistant Attorney General  
Open Records Division

KEH/sdk

Ref: ID# 353347

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)