



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2010

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

OR2010-01105

Dear Mr. Simmons:

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# 368053 (DART# 6955).

Dallas Area Rapid Transit ("DART") received a request for the questions and notes from the requestor's interviews for two specified positions. 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, we note that a portion of the submitted information, which we have marked, is not responsive to the instant request as it does not pertain to the requested interviews. DART need not release non-responsive information in response to this request, and this ruling will not address that information.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or 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. 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); ORD 626 at 8.

You seek to withhold the submitted interview questions and answers under section 552.122. You state that these questions are designed to assess the performance of applicants in the position and their knowledge of the position. Further, you argue that release of the

information at issue would provide an unfair advantage to future interviewees thereby reducing the effectiveness of the interview process. Having considered your arguments and reviewed the information at issue, we conclude that interview questions 3, 5, 7, 8, 9 and 10 of the passenger amenities interview and the questions we have marked in the field inspector I interview qualify as test items for the purposes of section 552.122(b). We also conclude that the release of the actual answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that DART may withhold interview questions 3, 5, 7, 8, 9 and 10 of the passenger amenities interview and the questions we have marked in the field inspector I interview along with the actual answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions as well as the candidate selection summary forms are general questions or statements evaluating the applicant's general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of the applicant. Accordingly, we determine that none of remaining questions constitutes a test item under section 552.122(b). As you claim no other exceptions to disclosure, the remaining information must be released to the requestor.¹

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, 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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

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¹We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if DART receives another request for this same information from a different requestor, then DART should again seek a decision from this office.

Ref: ID# 368053

Enc. Submitted documents

cc: Requestor
(w/o enclosures)