



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 23, 2010

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

OR2010-14507

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# 394689 (ORR DART #7558).

Dallas Area Rapid Transit ("DART") received a request for the interview records and notes related to the requestor's application for a specified position. You claim that the 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.

You contend that the submitted information is excepted under section 552.122 of the Government Code. Section 552.122(a) excepts from disclosure "[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]" Gov't Code § 552.122(a). Because you acknowledge that DART is a governmental unit operating a regional public transit system, and not "an educational institution . . . funded wholly or in part by state revenue," we find that section 552.122(a) is not applicable to any of the information at issue.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. *Id.* § 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(b) 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(b) 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 state that the submitted 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 find that the interview questions we have marked qualify as test items for the purposes of section 552.122(b). We also determine that the release of the actual answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that DART may withhold the information we have marked under section 552.122 of the Government Code. However, the remaining interview questions 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. Therefore, we determine that none of the 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.

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

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 394689

Enc. Submitted documents

c: Requestor  
(w/o enclosures)