



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2012

Ms. Shirley Thomas
Acting General Counsel
Dallas Area Rapid Transit
P.O. Box 660153
Dallas, Texas 75266-0163

OR2012-04802

Dear Ms. Thomas:

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# 4-9364 (DART ORR 8741).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to the requestor's application for eight specified positions. You claim that the submitted information is exempted 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(a) of the Government Code exempts 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). Section 552.122(b) of the Government Code exempts from disclosure "a test item developed by a . . . 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. ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122 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 raise sections 552.122(a) and 552.122(b) of the Government Code as exceptions to disclosure of the submitted information. You state that the public release of this information would impair DART's ability to evaluate qualified individuals for the positions at issue and would deter the effectiveness and confidentiality of DART's requirements from future applicants. Upon review, we find that you provide no indication that the materials were developed by an educational institution funded wholly or in part by state revenue. Accordingly, section 552.122(a) does not apply to the submitted information. Further, having considered DART's arguments and reviewed the information at issue, we find the questions we have marked are test items under section 552.122(b) of the Government Code. We also find the answers we have marked would tend to reveal the questions. Therefore, DART may withhold the information we have marked under section 552.122(b) of the Government Code. However, DART has not demonstrated how the remaining information at issue consists of test items for the purpose of section 552.122. Accordingly, DART may not withhold the remaining information at issue under section 552.122 of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of this state or an agency of another state or country is excepted from public release.¹ Gov't Code § 552.130. Upon review, we find DART must withhold the motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, DART may withhold the information we have marked under section 552.122(b) of the Government Code. DART must withhold the information we have marked under section 552.130 of the Government Code. The remaining information must be released.²

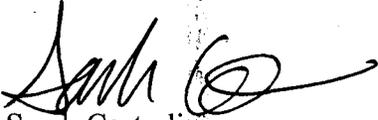
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note 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 or his authorized representative requests information concerning the individual). If DART receives another request for this information from a different requestor, then DART should again seek a decision from this office.

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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/som

Ref: ID# 449364

Enc. Submitted documents

c: Requestor
(w/o enclosures)