



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2012

Mr. David C. Schulze
Acting General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2012-08424

Dear Mr. Schulze:

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# 455252 (DART ORR 8894).

Dallas Area Rapid Transit ("DART") received a request for information pertaining to a named officer, including complaints, disciplinary action, and policy violations. You state you have released some information to the requestor. You 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.

Initially, we note the requestor states that his request specifically excludes personal information including social security numbers, home addresses, and home telephone numbers. Accordingly, such information is not responsive to the request. This decision does not address the public availability of non-responsive information and such information need not be released in response to the present request.

Section 552.122(a) of the Government Code 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). Section 552.122(b) of the Government Code excepts 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.*

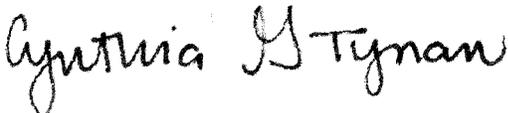
Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the 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 position of police officer 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. 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. As you raise no other exceptions to disclosure, DART must release the remaining information.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/bs

Ref: ID# 455252

Enc. Submitted documents

c: Requestor
(w/o enclosures)