



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 2, 2012

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

OR2012-15695

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# 466667.

The City of Dallas (the "city") received a request for the final validity report used for the fire captain's promotional process in 2009 and all training materials and instructions given to the assessors for the Fire Captains Assessment Center in 2009. You state the city will release the requested final validity report to the requestor. 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 representative sample of information.<sup>1</sup>

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . 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. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 information at issue under section 552.122 of the Government Code. You state the assessment center exercises measure the employee's specific knowledge of a discrete subject matter and ability to carry out the full and complete performance of their job duties. You further state these test questions are "re-used verbatim, or with only minor changes, on an ongoing basis to provide for consistent evaluations of candidates[.]" Further, you argue release of the information at issue could compromise future interviews. Having considered your arguments and reviewed the information at issue, we find the exercises we have marked in the submitted information qualify as test items under section 552.122(b) of the Government Code. We also find release of the portions of the Behaviorally Anchored Rating Scales ("BARS") we have marked would tend to reveal the test exercises themselves. Thus, the city may withhold this information under section 552.122 of the Government Code. We find, however, the remaining information at issue consists of generic BARS grading information and testing procedural information, and do not test any specific knowledge of the applicants. Accordingly, we determine that the remaining information at issue does not constitute test items under section 552.122(b). Therefore, the city may not withhold the remaining information at issue under section 552.122 of the Government Code. The remaining information must be released.

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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/tch

Ref: ID# 466667

Enc. Submitted documents

c: Requestor  
(w/o enclosures)