ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2013

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

OR2013-03138

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# 479606.

The City of Dallas (the "city") received a request for the requestor's written responses to the 2012 Fire Prevention Section Chief assessment. You state the city is releasing 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.

Section 552.122(b) of the Government Code excepts from required public 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 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 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); Open Records Decision No. 626 at 8 (1994).

You inform us Exhibit D consists of the requestor's written responses to the personnel, policy, operational, and in-basket test exercises for the 2012 Dallas Fire-Rescue Section

Chief Assessment Center.[1] You inform us the city utilizes these test exercises to evaluate the qualifications of candidates for promotion in the Dallas Fire Department. You explain the test exercises "are re-used verbatim, or with only minor changes, on an on-going basis to provide for consistent evaluations of candidates[.]" You argue release of the written responses to the test exercises will "reveal the subject matter of the test questions[,]" thereby undermining the city's ability to assess candidates in a consistent manner, and compromising the effectiveness of future candidate assessments. Having reviewed the submitted information and your arguments, we find the test exercises given for the assessment are "test items" for purposes of section 552.122(b), and the corresponding written responses reveal the test exercises themselves. Therefore, we conclude the city may withhold the submitted information under section 552.122(b) of the Government Code.

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,

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/ag

Ref: ID# 479606

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[1]Although you state the requestor does not seek access to the personnel, policy, operational, or in-basket test exercises themselves, you have submitted the test exercises as background information.