



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2013

Ms. Evelyn W. Njuguna
Staff Attorney
City of Houston Police Department
1200 Travis
Houston, Texas 77002-6000

OR2013-08777

Dear Ms. Njuguna:

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# 488568 (ORU No. 13-1451).

The Houston Police Department (the "department") received a request for the most recent "captain's promotional exam oral interview grading criteria form." You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of Morris & McDaniel, Inc. ("Morris"). Accordingly, you notified Morris of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have received arguments from Morris. Thus, we have considered the arguments and reviewed the submitted information.

Section 552.122 of the Government Code excepts from 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. ORD 626 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 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).

You inform us the submitted information consists of the grading criteria provided to assessors of the department's captain's assessment center exercises. You explain the exercises are designed to evaluate and measure the candidates' specific abilities and knowledge. You state the grading criteria identifies specific behaviors and answers to the test questions that would be rated high or low by the assessors and, thus, functions "like a descriptive answer key" to the assessment exercises. You state release of the submitted information would reveal the subject matter of the test questions and permit candidates to reconstruct the exercises. Thus, you state release of this information would undermine the department's ability to assess candidates in a consistent manner and compromise the effectiveness of future assessments. Based on your representations and our review, we conclude the submitted information consists of "test items" under section 552.122(b) of the Government Code. Therefore, the department may withhold the submitted information under section 552.122(b) of the Government Code.¹

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/dls

¹As our ruling is dispositive, we do not address the remaining arguments against disclosure submitted by Morris.

Ref: ID# 488568

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Dr. David M. Morris
President
Morris & McDaniel, Inc.
117 South Saint Asaph Street
Alexandria, Virginia 22314
(w/o enclosures)