



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 2, 2014

Ms. Heather Silver
Assistant City Attorney
City of Dallas
1500 Marilla Street, Room 7DN
Dallas, Texas 75201

OR2014-00066

Dear Ms. Silver:

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# 509638 (13-00513402).

The City of Dallas (the "city") received a request for information related to the city's fire department promotional assessments for lieutenant, captain, and battalion chief in 2009 and 2013.¹ You claim the requested information is excepted from disclosure under

¹You inform us the city asked for and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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. ORD 626 at 6. 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); ORD 626 at 8.

You state Exhibit H consists of responses to the “personnel problem test exercise, policy test exercise, and tactical test exercise for the 2009 Dallas Fire-Rescue Department Lieutenant Assessment Center,” Exhibit I consists of the “responses to the tactical test exercise, personnel problem test exercise, and the policy test exercise for the 2009 Dallas Fire-Rescue Captain Assessment Center,” and Exhibit J consists of “responses to the operation test exercise, in basket test exercise, and oral presentation test exercise fo the 2013 Dallas Fire-Rescue Battalion Chief Assessment Center.” You further state that Exhibit J also includes written notes of the candidates, which are collected at the end of the testing process. You inform us the city utilizes the test exercises at issue to measure the practical capabilities and knowledge of candidates for promotion in the city’s 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. Based on your representations and our review, we find the test exercises are test questions under section 552.122(b) and the written responses reveal the test exercises themselves. Therefore, we conclude the city may withhold Exhibits H, I, and J under section 552.122 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.

²We 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 that those records contain substantially different types of information than that submitted to 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 509638

Enc. Submitted documents

c: Requestor
(w/o enclosures)