



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 20, 2014

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

OR2014-04684

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# 517477.

The City of Dallas (the "city") received a request for the assessors' notes, scores, and the candidate's written responses pertaining to the Dallas Fire and Rescue Captain assessment center for the requestor. You state the city will release some of the requested information upon receipt of the reproduction cost. 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 representative sample of information.¹

Section 552.122(b) of the Government Code excepts from disclosure "a test item developed by a licensing agency or 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 section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). This office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *See id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects answers to test questions when the answers

¹We assume that 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.

might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You state the information at issue consists of the requested written responses, including the candidate's written notes, which are collected at the end of the testing process. You inform us the city utilizes the information at issue to "measure the practical capabilities and knowledge of candidates for promotion in the Fire Department." You explain the test exercises are test items that "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 test exercises at issue will thwart the city's ability to assess candidates in a consistent manner and compromise the effectiveness of future candidate assessments. Having reviewed the information at issue and your arguments, we find the examination questions given are "test items" for purposes of section 552.122(b), and the submitted answers and notes reveal the questions themselves. Therefore, we conclude the city may withhold the submitted answers and notes 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.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# 517477

Enc. Submitted documents

c: Requestor
(w/o enclosures)