



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2014

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

OR2014-07194

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# 521175.

The City of Dallas (the "city") received a request for documents pertaining to seven named individuals for the 2013 Dallas Fire-Rescue Captain Assessment Center and the most recent job task analysis for the Dallas Fire-Rescue Lieutenant.¹ You state you will release some of the requested information to the requestor. You claim that the submitted information is exempted from disclosure under section 552.122 of the Government Code. We have

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

considered the exception you claim and reviewed the submitted representative sample of information.²

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. ORD 626 at 6. 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 might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You state Exhibit C, which you acknowledge is not part of the responsive information, consists of the “personnel problem test exercise, policy test exercise, and operational test exercise for the 2013 Dallas Fire-Rescue Department Operations Captain Assessment Center.” You inform us the responsive information contained in Exhibit D consists of the written responses of the candidates to the test exercises in Exhibit C, and notes of the candidates, which are collected at the end of the testing process. You inform us the city utilizes the test exercises in Exhibit C to measure the practical capabilities and knowledge of candidates for promotion in the city’s 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 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 information at issue and your arguments, we find the examination questions given are “test items” for purposes of section 552.122(b) and the written responses and notes reveal the test exercises themselves. Therefore, we conclude the city may withhold Exhibit D 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.

²We 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.

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 521175

Enc. Submitted documents

c: Requestor
(w/o enclosures)