



July 19, 1999

Ms. Tracy Pounders
Assistant City Attorney
City of Dallas
2014 Main Street, Room 206
Dallas, Texas 75201

OR99-2009

Dear Ms. Pounders:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126090.

The Dallas Police Department (the "department") received an open records request from a department employee for "all notes and scoring documents completed by the assessors in the recent (March 22-25) Lieutenant assessment center." You inform us that the department has received additional requests for assessors' notes, which we assume for purposes of this ruling were created during the same time period and for the same assessments as those records currently before us. This office, therefore, will consider the records you submitted as being representative of the other requested records.¹ You state that the department will release to the requestors their respective "rank and final individual scores." You seek to withhold, however, the assessors' handwritten notes.²

As a threshold issue, we must first address your contention that the assessors' notes are not subject to the provisions of the act because this information

¹We note, however, that this office has previously ruled in Open Records Letter No. 99-1802 (1999) on the records you submitted to this office in connection with the records request made by Sergeant W.R. Roland. Consequently, we need not further address here the public nature of those particular documents. See Gov't Code § 552.301(a).

²In reaching our conclusion here, we 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 No. 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.

was not in the City's possession, but is kept by the assessors for their use; it was provided to the City by the assessor for the sole purpose of making this request for opinion. The assessors are not officers or employees, but are selected by the City's consultant on the basis of experience and ability, to provide the City with a final ranking of candidates and individual scores after a process of deliberation.

Section 552.002(a) of the Government Code defines the meaning of "public information" for purposes of the act as follows:

In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information *or has a right of access to it*. [Emphasis added.]

Consequently, it is immaterial that the department did not have actual possession of the records at issue at the time of the records requests if the department had a right of access to the information. In Open Records Decision No. 518 (1989), this office determined that where a governmental body employs an agent to carry out a task that it would otherwise have itself performed, information relating to that task that has been assembled or maintained by the agent is subject to the act. In this instance, because the task of interviewing and promoting police officers within the department would normally be conducted by department personnel, we conclude that the records at issue are subject to the provisions of the act and may be withheld from the requestors only to the extent that the records come within one of the act's exceptions to required public disclosure.

You first contend that the assessors' notes may be withheld pursuant to section 552.111 of the Government Code. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

The records at issue do not concern the department's policymaking function, but rather pertain solely to a routine personnel matter. The department may not withhold any of the requested information pursuant to section 552.111.

You next contend that the requested information is excepted from disclosure under section 552.122(b) of the Government Code. Section 552.122(b) of the Government Code excepts from required public disclosure "test item[s] developed by a . . . governmental body." Section 552.122(b) is applicable to test items, but only where the test items constitute a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." Open Records Decision No. 626 at 6 (1994). The exception does not apply to evaluations of an employee's overall job performance or suitability. *Id.* Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*

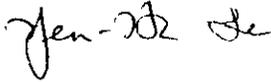
You have submitted to this office a memorandum from Management Scientist II, which conducted the assessments. The memorandum describes the assessment as consisting of two parts: the "In-Basket and Problem Analysis Exercises" and the "Oral Resume Exercise." Based on the descriptions contained in the memorandum, we conclude that the "In-Basket and Problem Analysis Exercises" constitute "test items" for purposes of section 552.122(b). Further, after reviewing the assessors' notes of the candidates, responses, we believe that the requested notes contain significant clues as to the content of those test items or the desired responses and thus may be withheld from public disclosure pursuant to section 552.122(b).

On the other hand, the memorandum from Management Scientists II does not argue that the "Oral Resume Exercise" constitutes test items, nor does it appear from the assessors' notes from this portion of the assessment that the candidates are being tested for their knowledge or ability in a particular area. Rather, judging from the assessors' notes, it appears that the responses to this portion of the assessment address the candidate's overall suitability for promotion rather than his or her knowledge or ability to perform assigned work. Such questions and answers are not excepted from public disclosure under section 552.122(b). The department, therefore, must release the assessors' notes regarding the candidates' responses in the "Oral Resume Exercise."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is written in a cursive style with a large initial "Y" and "L".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/eaf

Ref.: ID# 126090

Encl. Submitted documents