



July 12, 2001

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla
Dallas, Texas 75201

OR2001-3019

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149362.

The City of Dallas (the "city") received a request for all documents pertaining to the qualifying interviews and selection of the last two district managers in the Building Inspection Division of the Planning and Development Department. You state that some of the requested information will be released to the requestor. You claim, however, that some of the requested 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) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that 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). 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). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

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.

You contend that the submitted interview questionnaire and written exercises are “utilized by the City to measure the practical capabilities and knowledge of candidates for promotion in the Planning and Development Department.” Having reviewed your arguments and the information at issue, we cannot conclude that the interview questions and written exercises submitted in this case are “test items” for purposes of section 552.122(b). These interview questions and exercises are not a means for evaluating an individual’s knowledge or ability in a particular area, nor do they reveal the means of evaluation. *See* Open Records Decision No. 626 at 6, 8 (1994). Accordingly, the city must release the requested information to the requestor, except as provided below.

We note that the submitted documents contain information that may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Additionally, we note that section 552.117 does not apply to information provided by applicants who were not hired and, thus, did not become state officials or employees.

Therefore, the city may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. For any employee who timely elected to keep his or her personal information confidential, the city must withhold the employee’s home address and telephone number, social security number, and any information that reveals whether the employee has family members. The city may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. We have marked the type of information in the submitted documents that is excepted from disclosure under section 552.117 if the employee has made a timely election under section 552.024.

To summarize, we conclude that, with the exception of information excepted under section 552.117, the city must release the requested information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref.: ID# 149362

Enc.: Submitted documents

c: Mr. Dan Bostrom
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(w/o enclosures)