



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2009

Mr. Hyattye O. Simmons
Interim General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2009-02812

Dear Mr. Simmons:

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# 336245.

Dallas Area Rapid Transit ("DART") received a request for six categories of information pertaining to the requestor's application for employment. You state that you have released some of the responsive information to the requestor. You claim that 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 information.

Section 552.122 excepts from 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 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. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) 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); Open Records Decision No. 626 at 8.

You seek to withhold the submitted interview questions and answers under section 552.122. You state that these questions are designed to assess the performance of applicants in the position and their knowledge of the position. Further, you argue that release of the information at issue would provide an unfair advantage to future interviewees thereby

reducing the effectiveness of the interview process. Having considered your arguments and reviewed the information at issue, we conclude that interview questions 10, 14, and 15 qualify as test items for the purposes of section 552.122(b). We also conclude that the release of the actual answers to those questions would tend to reveal the questions themselves. Accordingly, we conclude that DART may withhold interview questions 10, 14, and 15 along with the actual answers to those questions, under section 552.122 of the Government Code. We find, however, that the remaining interview questions as well as the interview board recommendation form are general questions or statements evaluating the applicants' general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of the applicants. Accordingly, we determine that none of remaining questions constitutes a test item under section 552.122(b). As you claim no other exceptions to disclosure, the remaining information must be released to the requestor.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/eeg

Ref: ID# 336245

Enc. Submitted documents

c: Requestor
(w/o enclosures)