



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2009

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

OR2009-08390

Dear Mr. Toscano:

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# 346273.

The City of Dallas (the "city") received a request for the assessment notes and assignment writings of named individuals from the 2006 fire operations lieutenant's test and from the 2006 captains and chief assessment center. You state some of the requested information will be provided to the requestor upon payment, but claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exceptions 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 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. *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 (1994).

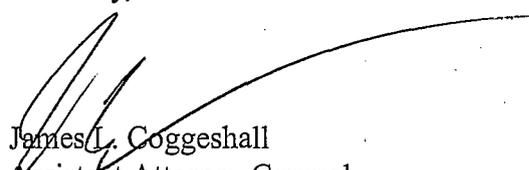
¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

You inform us Exhibit F contains “written responses to the personnel problem test exercise, policy test exercise, and tactical test exercise for the 2006 Dallas Fire-Rescue Department Lieutenant Assessment Center[.]” Exhibit G contains “the written responses to the personnel problem test exercise, policy test exercise, and tactical test exercise for the 2006 Dallas Fire-Rescue Captain Assessment Center[.]” and Exhibit H contains “written responses to the in-basket test exercise, tactical test exercise, and oral presentation test exercise for the 2006 Dallas Fire-Rescue Department Battalion Chief Assessment Center.”² You inform us the city utilizes these exercises on an ongoing basis to evaluate the qualifications of candidates for promotion in the fire department. You explain the assessment center test exercises “are re-used verbatim, or with only minor changes, on an on-going basis to provide for consistent evaluations of candidates[.]” You also explain the 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 submitted information and your argument, we find the test exercises in the assessment center are test questions under section 552.122(b) and the responses to the assessment center reveal the exercises themselves. We therefore conclude the city may withhold the submitted information under section 552.122.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cc

²Although you state the requestor does not seek access to the exercises themselves, you have submitted the exercises as background information.

Ref: ID# 346273

Enc. Submitted documents

cc: Requestor
(w/o enclosures)