



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 28, 2009

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

OR2009-13601

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# 356573.

The City of Dallas (the "city") received a request for information pertaining to the 2004, 2006, and 2009 Fire Captain's promotional exams. You state that you will release some of the requested information. You claim that the remaining 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(b) of the Government Code 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).

You claim that Exhibits F through K are excepted under section 552.122. You inform us that Exhibits F through H consist of the requestor's written responses to the personnel problem test exercise, policy test exercise, and tactical test exercise for the 2004, 2006, and 2009 Dallas Fire-Rescue Captain Assessment Center.¹ You state Exhibits I through K consist of the Behaviorally Anchored Rating Scales ("BARS") for the assessment center exercises, which are analogous to a "teacher's manual" for the assessors because they reveal unique information about the test questions, suggested answers, and criteria for grading the test questions. You explain that the assessment center exercises were developed at "significant expense to the civil service department and the city," and are re-used verbatim or with only minor changes, on an on-going basis to provide for the consistent evaluations of candidates. You also explain that release of the candidates' responses to the assessment center exercises and BARS would reveal the test questions or "reveal the subject matter of the test questions and will permit candidates to reconstruct the test questions." After reviewing the submitted information and your arguments, we find the exercises are test items under section 552.122(b), and the written responses and BARS to the assessment center reveal the exercises themselves. Therefore, pursuant to section 552.122 of the Government Code, the city may withhold Exhibits F through K in their entirety.

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, toll free, at (888) 672-6787.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

¹Although you state the requestor does not seek access to the personnel problem test, policy test or tactical test exercises themselves, you have submitted the exercises as background information.

Ref: ID# 356573

Enc. Submitted documents

cc: Requestor
(w/o enclosures)