



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2010

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

OR2010-11961

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# 389595.

Dallas Area Rapid Transit ("DART") received a request for the recruitment files for two specified positions. You claim that the submitted information is excepted from disclosure under sections 552.111 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

You contend that the interview questions in Attachment B are excepted under section 552.122 of the Government Code. Section 552.122(a) excepts from disclosure "[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]" Gov't Code § 552.122(a). Section 552.122(b) excepts from disclosure "[a] test item developed by a . . . governmental body[.]" *Id.* § 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

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<sup>1</sup>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 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.

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); ORD 626 at 8.

You assert that the interview questions are used to assess an applicant's knowledge of the positions. You also assert that the release of this information would be detrimental to future interview processes because the questions and answers would provide an unfair advantage to future applicants and would impair DART's ability to evaluate a qualified applicant. Because you acknowledge that DART is a governmental unit operating a regional public transit system, and not "an educational institution . . . funded wholly or in part by state revenue," we find that section 552.122(a) is not applicable to any of the information at issue. Having reviewed the submitted information, we find the questions we have marked evaluate an applicant's specific knowledge or ability in a particular area, and qualify as "test items" under section 552.122(b) of the Government Code. We also find that release of the answers to these test items would tend to reveal the questions themselves. Therefore, DART may withhold the information we marked pursuant to section 552.122(b). However, we find the remaining questions are general questions and information evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, the remaining questions are not excepted from disclosure under section 552.122 of the Government Code.

You raise section 552.111 of the Government Code for the remaining information in Attachment B. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This section encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass internal administrative or personnel matters, and disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000)

(section 552.111 not applicable to personnel-related communications that did not involve policymaking). However, a governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

You contend that the remaining information in Attachment B is excepted under section 552.111. You state that the remaining information consists of personnel matters of a broad scope that affect DART's policy mission. Further, you state "the documents provide the process and policy in place by which DART offers positions to applicants." Upon review, however, we find that the remaining information pertains to administrative and personnel matters that do not rise to the level of policymaking. Therefore, you have not demonstrated the applicability of section 552.111 to this information, and none of it may be withheld on this basis. As you raise no further exceptions to disclosure of the remaining information, it must be released.

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](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,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 389595

Enc. Submitted documents

c: Requestor  
(w/o enclosures)