ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2013

Ms. Halfreda Anderson-Nelson
Senior Assistant General Counsel
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2013-01433

Dear Ms. Anderson-Nelson:

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# 477331 (DART ORR# 9426).

Dallas Area Rapid Transit ("DART") received a request for information concerning the requestor's interview for a specified position. You state DART released some of the information. You further state DART does not maintain information responsive to a portion of the request.[1] You claim 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 of the Government Code 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 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

[1]The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

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 state the release of the submitted evaluation sheets and interview guides would provide an unfair advantage to future applicants, requiring DART to change its interview questions in order to secure the confidentiality of the testing requirements for the position at issue. Based on your representations and our review, we find Question B2 qualifies as a test item under section 552.122(b) of the Government Code. We also find the release of the model answer and evaluator comments for Question B2 would tend to reveal the question itself. Accordingly, DART may withhold Question B2 and the corresponding model answer and evaluator comments under section 552.122(b) of the Government Code. However, the remaining information evaluates the applicant's individual abilities, personal opinions, and subjective abilities to respond to particular situations, and it does not test any specific knowledge. Therefore, we conclude DART has not demonstrated the remaining information consists of test items subject to section552.122(b) of the Government Code, and DART may not withhold it on that basis. As you raise no further exceptions, the remaining information 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, 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,

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 477331

Enc. Submitted documents

c: Requestor
(w/o enclosures)