



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 27, 2013

Mr. Warren M. S. Ernst  
Chief of the General Counsel Division  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2013-03341

Dear Mr. Ernst:

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# 479867.

The City of Dallas (the "city") received a request for three categories of information pertaining to the requestor's participation in a specified police sergeant assessment.<sup>1</sup> You inform us the city will release some of the requested information. 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, part of which is a representative sample.<sup>2</sup>

---

<sup>1</sup>You inform us the city received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup>We 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.

Section 552.122(b) of the Government Code exempts from required public 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. Whether information falls within the scope of section 552.122 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 inform us the submitted information consists of test exercises the city utilizes to measure the practical capabilities and knowledge of candidates for promotion in the city’s police department. You explain the test exercises “are re-used verbatim, or with only minor changes, on an on-going basis to provide for consistent evaluations of candidates[.]” You argue 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. You explain some of the information at issue consists of the Behaviorally Anchored Rating Scales (“BARS”) for these test exercises, and 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 further inform us “BARS identify specific behaviors and answers to test questions that would be rated high or low” by the assessors of the candidate interviews, and the BARS function “like a descriptive answer key” to the test exercises. Having considered your arguments and reviewed the information at issue, we find the exercises we have marked in the submitted information qualify as test items under section 552.122(b) of the Government Code. We also find release of the portions of the BARS we have marked would tend to reveal the test exercises themselves. Thus, the city may withhold the marked information under section 552.122 of the Government Code. We find, however, the remaining information consists of generic BARS grading information and testing procedural information, and does not test any specific knowledge of candidates. Accordingly, we determine this information does not constitute test items under section 552.122(b). Therefore, the city may not withhold the remaining information under section 552.122. The city must release the remaining information.

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,

A handwritten signature in black ink, appearing to read 'KLC', with a horizontal line extending to the right.

Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 479867

Enc. Submitted documents

c: Requestor  
(w/o enclosures)