



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2014

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

OR2014-13265

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# 531409.

The City of Dallas (the "city") received a request for specified information related to a specified sergeant assessment.¹ You state you will release some of the requested information to the requestor. You claim some of 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 representative sample of information.²

¹You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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.

Initially, you state some of the submitted information, consisting of the personnel test exercise, policy test exercise, and operational test exercise for the assessment at issue, is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the city need not release non-responsive information to the requestor.

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. Open Records Decision No. 626 at 6 (1994). This office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *See id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects 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 information in Exhibit C consists of candidates’ written responses to the personnel test exercise, policy test exercise, and operational test exercise for the assessment at issue. You inform us the city utilizes the test exercises at issue to evaluate the qualifications of candidates for promotion in the Dallas Fire-Rescue Department. You explain the test exercises are test items that “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 information in Exhibit C will thwart the city’s ability to assess candidates in a consistent manner, and compromise the effectiveness of future candidate assessments. Having reviewed the information at issue and your arguments, we find the test exercises given for the assessment at issue are “test items” for purposes of section 552.122(b), and the corresponding written responses at issue in Exhibit C reveal the test exercises themselves. Therefore, we conclude the city may withhold the information in Exhibit C under section 552.122(b) of the Government Code.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristi L. Godden". The signature is written in a cursive style with a large initial "K".

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/eb

Ref: ID# 531409

Enc. Submitted documents

c: Requestor
(w/o enclosures)