



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 18, 2015

Ms. Halfreda Anderson Nelson
Public Information Officer
Dallas Area Rapid Transit
P.O. Box 660163
Dallas, Texas 75266-0163

OR2015-09551

Dear Ms. 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# 569738 (DART ORR# 11506).

Dallas Area Rapid Transit ("DART") received a request for the requestor's personnel file. You state DART has released 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.

DART states it sought clarification of the request. *See* Gov't Code § 552.222 (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). DART states it has not received a response to the request for clarification. Thus, for the portions of the requested information for which DART has sought but has not received clarification, we find DART is not required to release information in response to these portions of the request. However, if the requestor clarifies these portions of the request for information, DART must seek a ruling from this office before withholding any responsive information from the requestor. *See* Gov't Code § 552.222; *City of Dallas*, 304 S.W.3d at 387. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as DART has submitted information responsive to the request and has made arguments against disclosure of this information, we will address the applicability of DART's arguments to the submitted information.

Section 552.122(a) of the Government Code 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). 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.” ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(a) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976). *See generally* ORD 626 at 4-5. 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).

You claim the submitted information in Attachment B is excepted under section 552.122. You assert the questions test the knowledge and abilities of employees in a particular area. Upon review, we find questions one through five consist of test items under section 552.122(b). We also find release of the responses to these questions would tend to reveal the questions themselves. Therefore, DART may withhold these questions and their responses, which we have marked, under section 552.122(b). However, we conclude DART has not established the remaining information tests an individual’s or group’s knowledge or ability in a particular area. *See* ORD 626 at 9. Therefore, DART may not withhold any of the remaining information under section 552.122(b) of the Government Code. Accordingly, DART 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.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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 569738

Enc. Submitted documents

c: Requestor
(w/o enclosures)