



June 20, 2000

Mr. Jesús Toscano, Jr.
Administrative Assistant City Attorney
City of Dallas
1500 Marilla, Room 78 North
Dallas, Texas 75201

OR2000-2344

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136389.

The City of Dallas (the “city”) received a request for “information pertaining to the job analysis for the Dallas Fire Prevention Lieutenant Promotional Process, and any other job analysis by the Management Scientists II, for any and all rank(s)” as well as “a copy, before implementation, of any and all future job analysis or any changing of percentages/factoring etc. of the promotional test by any and all companies (current and future), involved in the process as it pertains to the Dallas Fire Department and ALL of its promotions (sic).” You seek to withhold portions of the information responsive to the request under section 552.122 of the Government Code. Specifically, you claim that the information you have highlighted in Exhibit B, and Exhibit C in its entirety are excepted from disclosure. You state that Exhibit B, an Appendix to Volume One: Detailed Summary of TASK and SKAP statistics of the Report On Job Analysis, Test Development/Validation of Promotional Examination Process for Fire prevention Lieutenant in the City of Dallas Fire Department, is a representative sample of the requested information.¹ We understand that the remaining

¹In reaching our conclusion here, 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

responsive information will be made available to the requestor. Section 552.122(b) excepts from required disclosure “[a] test item developed by a licensing agency or governmental body.” 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. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 (1994). 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).

Having reviewed your arguments and the information at issue, we conclude that the information is not a “test item” for purposes of section 552.122(b) of the Government Code. Consequently, the city may not withhold the information from required public disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/pr

Ref: ID# 136389

Encl. Submitted documents

cc: Mr. Joe M. Spigner
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(w/o enclosures)