



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 5, 2018

Ms. Lisa Ruiz  
Paralegal  
Office of the City Attorney  
City of Dallas  
1500 Marilla Street, Room 7DN  
Dallas, Texas 75201

OR2018-00415

Dear Ms. Ruiz:

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# 689687 (PIR Nos. C007871-101417, C007882-101517).

The City of Dallas (the "city") received two requests for notes and assessment scoring papers for a specified fire rescue captain's test. You state you will release some information. 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.<sup>1</sup>

Section 552.122(b) excepts from disclosure test items developed by a 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

---

<sup>1</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.

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. *Id.* 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 fire captain's rescue test consists of the tactical, oral presentation, and in-basket test exercises. You inform us the city utilizes this information to evaluate the qualifications of candidates for promotion in the city's fire department. You explain Exhibit C consists of 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 reviewed the information at issue and your arguments, we find the items you marked are "test items" for purposes of section 552.122(b), and the BARS reveal the test exercises themselves. Therefore, we conclude the city may withhold the information you marked under section 552.122(b) of the Government Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty

In summary, the city may withhold the information it has marked under section 552.122(b) of the Government Code. The city must release the remaining information, but may only release any copyrighted information in accordance with copyright law.

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](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,



Kelly McWethy  
Assistant Attorney General  
Open Records Division

KSM/som

Ref: ID# 689687

c: Requestor