



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 8, 2018

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

OR2018-00550

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# 689908 (Reference Nos. C007875-101417, C007931-101617, C007907-101617).

The City of Dallas (the "city") received three requests for information pertaining to the 2017 Dallas Fire-Rescue Lieutenant's assessment. You state you have released some 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.

We note the requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-26749 (2017). In that ruling, we determined the city may withhold the information it has marked under section 552.122(b) of the Government Code, and must release the remaining information in accordance with copyright law. There is no indication the law, facts, and circumstances on which the previous ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the city may continue to rely on Open Records Letter No. 2017-26749 as a previous determination and withhold or release the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of

previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information was not subject to prior ruling, we will address the applicability of the Act to the remaining information.

Section 552.122(b) of the Government Code exempts from disclosure a test item developed by a licensing agency or governmental body. Gov't Code § 552.122(b). 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. Open Records Decision No. 626 at 9 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *See id.* at 6. 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. The city states the submitted information relates to in-basket, operations, and presentation test exercises that the city utilizes to measure the practical capabilities and knowledge of candidates for promotion in its Fire-Rescue Department. The city explains the test exercises "are re-used verbatim, or with only minor changes, on an on-going basis to provide for consistent evaluations of candidates[.]" It also argues release of the test questions "will thwart the city's ability to assess the abilities of its Fire-Rescue Department officer candidates in a consistent manner and compromise the effectiveness of future candidate assessments." Upon review, we conclude the information that the city has marked consists of test items under section 552.122(b). Therefore, the city may withhold the information it has marked under section 552.122(b).

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 of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may continue to rely on Open Records Letter No. 2017-26749 as a previous determination and withhold or release the requested information in accordance with that ruling. 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, 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 that reads "D. Michelle Case" with a stylized flourish at the end.

D. Michelle Case
Assistant Attorney General
Open Records Division

DMC/gw

Ref: ID# 689908

Enc. Submitted documents

c: Requestor
(w/o enclosures)