



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 8, 2019

Ms. Anne M. Constantine
Legal Counsel
Dallas/Fort Worth International Airport Board
P.O. Box 619428
DFW Airport, Texas 75261-9428

OR2019-12359

Dear Ms. Constantine:

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# 764588.

The Dallas/Fort Worth International Airport Board (the "board") received a request for information pertaining to specified promotional process packets including the submitted submissions for each stage, notes on responses and scoring, and any guides provided on how to score the packets. 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 representative sample of information.¹

Section 552.122(b) of the Government Code excepts 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

¹We 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.

(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.

You state the information at issue consists of questions the board utilizes to “test an individual’s or group’s knowledge, skill or ability to perform the duties of a sergeant within the DFW Department of Public Safety.” Further, you state “the questions are specific to the job duties of a sergeant and are the same tests that have been used in the past and that will continue to be used for the foreseeable future.” Based on your representations and our review, we find some of the submitted questions consist of test items under section 552.122(b) of the Government Code. Therefore, the board may withhold the information we marked under section 552.122(b) of the Government Code. However, we find the remaining information only evaluates the applicant’s general workplace skill, subjective ability to respond to particular situations, and overall suitability for employment, and does not test any specific knowledge of the applicant. Accordingly, we determine the remaining information at issue does not consist of test items under section 552.122(b) of the Government Code. Therefore, the board may not withhold the remaining information under section 552.122 of the Government Code.

We note some of the remaining 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 board may withhold the information we marked under section 552.122(b) of the Government Code. The board must release the remaining information; however, any information protected by copyright may only be released 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 "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 764588

Enc. Submitted documents

c: Requestor
(w/o enclosures)