



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 30, 2019

Ms. Tangerla Davis Williams
Interim Assistant General Counsel
Dallas Area Rapid Transit
PO Box 660163
Dallas, Texas 75266-0163

OR2019-14297

Dear Ms. Williams:

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# 768082 (PIR No. W003697).

Dallas Area Rapid Transit ("DART") received a request for the requestor's personnel file. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted Bus Operator Examinations pertaining to the requestor. To the extent any additional information responsive existed on the date the commission received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" *Id.* § 552.122(b). In Open Records Decision No. 626 (1994),

¹Although you initially raised sections 552.101, 552.103, 552.104, 552.107, 552.108, and 552.111 of the Government Code as exceptions to disclosure, you provided no arguments regarding the applicability of these sections. Accordingly, we assume you no longer assert these sections. *See* Gov't Code §§ 552.301, .302.

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. Open Records Decision No. 626 at 6 (1994). The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* 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) (construing statutory predecessor). 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.

DART seeks to withhold the submitted information under section 552.122 of the Government Code. DART states the questions test the arithmetic, local geography, and specific job-related questions regarding the position of bus operator. Based on these representations and our review, we find the submitted questions we indicated are “test items” under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, DART may withhold the questions and answers we indicated under section 552.122(b) of the Government Code. However, we find you failed to demonstrate the remaining information constitutes a test item or reveals test questions. Thus, DART may not withhold the remaining information on the basis of section 552.122(b) of the Government Code. 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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 768082

Enc. Submitted documents

c: Requestor
(w/o enclosures)