



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2019

Ms. Erin Smith
Test Validation Specialist
City of Dallas Civil Service Department
1500 Marilla Street, Room 1C-South
Dallas, Texas 75201

OR2019-35428

Dear Ms. Smith:

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# 801920 (ORR# C008806).

The City of Dallas (the "city") received a request for scoring sheets for assessments for two named individuals and positions. The city states it is releasing some of the requested information. The city claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.¹

Initially, we note the information submitted as Exhibit B is not responsive to the instant request for information because it does not consist of scoring sheets. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983). This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

¹ 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.

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). 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.” ORD 626 at 6. 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.* 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 seeks to withhold the information submitted as Exhibit C under section 552.122 of the Government Code. The city informs us the information at issue consists of test items concerning promotional examinations in the city’s fire-rescue department (the “department”). The city states the information is designed to measure demonstrable skills and behaviors to provide outstanding leadership in the department. The city states it reuses the test items on an on-going basis. Additionally, the city states release of the information at issue would thwart the city’s ability to assess the abilities of its officer candidates in a consistent manner and would compromise the effectiveness of future candidate assessments. Based on these representations and our review, we agree some of the information at issue, which we marked, is subject to section 552.122(b) of the Government Code. Accordingly, the city may withhold the information we marked pursuant to section 552.122(b) of the Government Code. However, we find the city has not demonstrated the applicability of section 552.122 to the remainder of Exhibit C, and the city may not withhold any of the remaining information at issue on that basis.

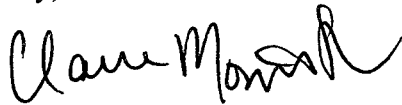
We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted 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 withhold the information we marked in Exhibit C under section 552.122 of the Government Code. The city must release the remainder of Exhibit C; however, any information that is subject to copyright may be released only 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/rm

Ref: ID# 801920

Enc. Submitted documents

c: Requestor
(w/o enclosures)