



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 5, 2020

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

OR2020-06891

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# 815583 (PIR No. C011319).

The City of Dallas (the "city") received a request for information pertaining to a specified evaluation of the requestor.¹ You state the city will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.122 of the Government Code. Additionally, you state release of the submitted information may implicate the proprietary interests of Industrial/ Organizational Solutions, Inc. ("IOS"). Accordingly, you state, and provide documentation showing, you notified IOS of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from IOS.

¹ The city states it sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

We have considered the submitted arguments and reviewed the submitted representative sample of information.²

Initially, you state, and we agree, Exhibit D is not responsive to the instant request for information because it does not pertain to the specific information requested. 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.

Section 552.122 of the Government Code exempts from disclosure “[a] test item developed by a licensing agency or governmental body[.]” Gov’t Code § 522.122(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.

You inform us Exhibit B consists of checklists pertaining to the tactical, oral presentation, and personnel meeting test exercises. You inform us the city utilizes this information to evaluate the qualifications of candidates for promotion in the city’s fire department. Further, you inform us the “questions are re-used verbatim, or with only minor changes, on an on-going basis to provide for consistent evaluations of candidates.” Additionally, you state release of the information at issue would compromise the effectiveness of the city’s ability to assess the candidates in a consistent manner and compromise the effectiveness of future candidate assessments. Based on these representations and our review, we agree the issue at issue qualifies as test items under section 552.122(b) of the Government Code. Therefore, we conclude the city may withhold the information you marked in Exhibit B under section 552.122(b) of the Government Code.³

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.

² 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.

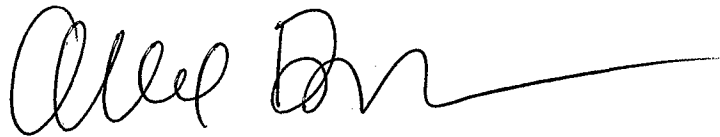
³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

In summary, the city may withhold the information you marked under section 552.122(b) of the Government Code. The city must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

Finally, you ask this office to issue a previous determination permitting the city to withhold certain information under section 552.122 of the Government Code without the necessity of requesting a ruling from this office. *See* Gov't Code § 552.301(a) (allowing a governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, 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,



Alexandra C. Burks
Attorney
Open Records Division

ACB/mo

Ref: ID# 815583

c: Requestor

1 Third Party