



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

May 21, 1990

Mr. Charles F. McNabb
First Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR90-193

Dear Mr. McNabb:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 8897.

The City of El Paso received an open records request from an individual for all records relating an examination he took for a position with the city. You inform us that, in accordance with Open Records Decision No. 353 (1982), the city has denied the requestor access to the examination questions. On the basis of the same decision, you contend that the city may withhold the responses the individual marked on a computer scoring sheet and a computer print-out that lists the applicant's incorrect answers by item number.

In Open Records Decision No. 543 (1990) we discussed the policy underlying Open Records Decision No. 353 and the authorities cited in the decision. We observed that the decision was an acknowledgement that the power to conduct examinations for licensing, certification, and placement purposes carries with it the implied power to preserve the integrity of the examination process. If the examiner has a policy of using the same test items on subsequent examinations, it was understood that maintaining the confidentiality of the test items is a legitimate consideration. Thus, Open Records Decision No. 353 determined that under these conditions a governmental body had the implied power to preserve the confidentiality of the test items.

Open Records Decision No. 543 also determined that the rationale of Open Records Decision No. 353 was incorporated into the recently-enacted section 3(a)(22) of the Open Records Act, which protects from required public disclosure

"test items developed by . . . governmental bodies." The enactment of this exception did not, in our opinion, have the effect of nullifying the prior decisions, and thus the rationale of the prior decisions remained a viable justification for nondisclosure. You did not cite section 3(a)(22) as an exception to disclosure, nor did you submit copies of the test questions to this office. We assume by your reliance on Open Records Decision No. 353 that the city has a policy of reusing the test questions on future examinations. If this assumption is correct, we believe the city acted properly in withholding the examination questions, in spite of its failure to cite section 3(a)(22).

Open Records Decision No. 353 did not, however, conclude that all information relating to the examination process could be withheld from public disclosure, but only information that would reveal the contents of the examination itself. You contend that the release of the computer printout showing, solely by item number, the applicant's incorrect answers on the machine-graded portion of the examination would permit the requestor, by the use of notes or memory, to recall the questions and identify the correct answers by reference to score cards. The city's use of these questions on future examinations would therefore be hampered. The information submitted to this office, however, consists of neither test items nor information that tends to reveal the content of test items. Consequently, you may not withhold this information pursuant to section 3(a)(22) or Open Records Decision No 353.¹

You also seek to withhold pursuant to the "intra-agency memorandum exception" individual scoring papers from the applicant's oral examination. These standardized rating forms contain the examiners' evaluations of the applicant's screening interview. To the extent that the forms contain the evaluators' notations, this information may be withheld pursuant to section 3(a)(11) of the act. See Open Records Decision No. 538 (1990).

1. It is an inherent problem in any testing situation such as this that individuals with an excellent memory could remember the content and order of all test items they are required to answer and the possible answers listed for each question. Section 3(a)(22) does not purport to remedy such a rare occurrence.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-193.

Yours very truly,



Steve Aragón
Assistant Attorney General
Opinion Committee

SA/RWP/le

Ref.: ID# 8897

cc: Richard C. Lovelace, Jr.
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