



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 2, 1994

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR94-428

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ We assigned your request ID# 20478.

The Texas Department of Public Safety (the "department") has received a request for information relating to a department promotional process. Specifically, the requestor seeks "each and every document relied upon to determine who the best qualified applicants were for the positions of Sergeant, Highway Patrol, Drivers License, and License and Weight" for twelve position openings from February 1985 through April 1993. In addition, the requestor seeks "each candidate's HQ-127 and Pe-24 which were made available to the Oral Interview Board members in addition to the Pe40a." You have submitted representative samples of the requested information to us for review. They include, *inter alia*, some of the requested forms and an applicant's background investigation and personal history statement. You object to release of the requested information under sections 552.102, 552.111, and 552.122 of the act.²

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²We 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 No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

Section 552.102(a) excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications of public employees. Open Records Decision Nos. 470, 467 (1987). Information previously held by this office not to be protected by common-law privacy interests includes, for example, applicants' and employees' educational training; names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job preferences or ability; birthdates, height, weight, marital status, and social security numbers. *See* Open Records Decision No. 455 (1987); *see also* Open Records Decision Nos. 470, 467; 444 (1986); 421 (1984); 405 (1983).

An applicant's personal financial information, however, may be excepted from required public disclosure under section 552.101. In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373 at 3. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.* at 4; *see also* Open Records Decision Nos. 600 (1992); 545 (1990). In Open Records Decision No. 545, this office applied a similar presumption to personal financial information of public employees and held that, absent "special circumstances," information concerning a public employee's participation in a deferred compensation plan is protected from disclosure by common-law privacy. Open Records Decision No. 545 at 4-5.

The personal history statement submitted to us for review includes information about the applicant's financial history and past credit history. This information reveals the applicant's sources of income, salary, mortgage payments, assets, credit history, and other personal financial information. We conclude that this information is highly intimate or embarrassing. Moreover, the information you have provided does not indicate any special circumstances that would make the applicant's personal financial information a matter of legitimate public concern. Accordingly, the financial history and past credit history segments of the personal history statement must be withheld from required public disclosure under section 552.102 of the act. In addition, we have marked some information contained in the submitted background investigation and personal history statement that we conclude is intimate or embarrassing and of no legitimate public concern. This information must also be withheld from required public disclosure under section 552.102 of the act. The remaining information submitted to us for review, however, contains no information that is intimate or embarrassing. Moreover, this information is of legitimate interest to the public. Accordingly, this information may not be withheld from required public disclosure under section 552.102.

You also claim that the requested information is excepted from required public disclosure by section 552.111 of the act, which excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined section 552.111 and held that it excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. at 5-6. As the requested information relates to an internal administrative and personnel matter, *i.e.*, an employee selection process, we conclude that section 552.111 does not except it from required public disclosure.

Finally, you claim that some of the requested information is excepted from required public disclosure by section 552.122 of the Government Code. Section 552.122 excepts

(a) A curriculum objective or test item developed by an educational institution that is funded wholly or in part by state revenue . . . [and;]

(b) A test item developed by a licensing agency or governmental body.

Gov't Code § 552.122.³ In particular, you claim that the evaluations contained in the information submitted to us for review include "test items" that are protected by section 552.122. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 generally includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated. An evaluation does not necessarily constitute a test, however, simply because it is labelled as a test, because it is comprised of questions and answers, or because it involves some sort of scoring system. *Id.* Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*

We have examined the information to us for review and conclude that it does not constitute "test items" within the meaning of section 552.122. Accordingly, the requested information may not be withheld from required public disclosure under section 552.122 of the act. Except as noted above, the requested information must be released in its entirety.⁴

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 contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 20478

³The Seventy-third Legislature deleted the reference to "curriculum objectives" in former section 3(a)(22), V.T.C.S. article 6252-17a. *See* Acts 1993, 73d Leg., ch. 347, § 8.30, at 1557. This amendment is not reflected in the codification of former section 3(a)(22) as section 552.122 of the Government Code.

⁴We note that the department must withhold some of the requested information under section 552.117 of the act, which excepts the home address or telephone number of a former or current government official or employee or peace officer. While section 552.024 of the act provides that section 552.117 is applicable only when an employee indicates in writing that he or she does not want his or her home address or telephone number disclosed, a peace officer need not indicate in writing that he or she does not want his or her home address or telephone number disclosed. *See generally* Open Records Decision No. 488 (1988). Such information is expressly excepted from required public disclosure by section 552.117(1)(B) and must not be released. If the submitted information contains the home addresses and home telephone numbers of peace officers, the department must not release this information.

Enclosures: Marked Documents
Open Records Decision No. 626

cc: Mr. Pedro Lozano, Jr.
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(w/o enclosures)