



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 9, 1997

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-1077

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105960.

The City of Houston (the "city") received requests for several categories of information, including records pertaining to the requestor, records pertaining to a city employee, and records concerning test questions related to the promotion of sanitarians. You advise us that you will release some of the requested information to the requestor. However, you claim that some of the requested information is excepted from disclosure under sections 552.103(a) and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. 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, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 (1994) at 6. We conclude that the submitted test questions test an individual's or group's knowledge or ability in a particular area. Therefore, the city may withhold the submitted test questions under section 552.122(b).

Next, you claim that documents contained in Exhibit 4 are excepted from disclosure pursuant to section 552.103(a). Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under section 552.103(a).

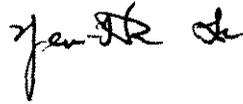
You inform us that the requestor, a city employee, is "presently involved in litigation with the [c]ity through the filing of a grievance," and that a "hearing before the [c]ivil [s]ervice examiner is now pending in this case." We conclude that the grievance process you have presented to this office is not litigation for the purposes of section 552.103(a). Therefore, you may not withhold the documents contained in Exhibit 4 pursuant to section 552.103.

However, we note that the Exhibit 4 documents contain the home addresses, phone numbers, social security numbers, and family information of current or former city employees. It is possible that this information may be confidential under section 552.117 of the Government Code, and therefore, this specific information, depending on the specific circumstances, may not be released. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. We have marked the types of information that must be withheld pursuant to section 552.117.

Lastly, the documents in Exhibit 4 include an employee's W-4 tax form. A W-4 form is confidential as a matter of law. *See* 26 U.S.C. § 6103(a); Open Records Decision No. 600 (1992) (concluding that employee W-4 forms are excepted from public disclosure by 26 U.S.C. § 6103(a)). Accordingly, you must withhold the form under section 552.101 of the Government Code which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 105960

Enclosures: Marked documents

cc: Mr. Bernard S. Silverman, R.S., C.E.O.
5807 Claridge Dr.
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(w/o enclosures)

