



May 21, 2001

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2001-2081

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147488.

The City of Corpus Christi (the "city") received a written request for all records pertaining to an employee grievance filed by the requestor. You state that the city has released most of the requested information. You contend, however, that certain other records are excepted from required public disclosure pursuant to sections 552.101, 552.107(1), 552.111, and 552.122(b) of the Government Code.¹

You first contend that the information you highlighted in Exhibit B is excepted from public disclosure pursuant to section 552.107(1) of the Government Code, which protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice or opinion and client confidences. *See* Open Records Decision No. 574 (1990). After reviewing the information you highlighted, we conclude that this information

¹In reaching our conclusion here, we 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 (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 that those records contain substantially different types of information than that submitted to this office.

constitutes legal advice and opinion. Accordingly, the city may withhold the highlighted information in Exhibit B pursuant to section 552.107(1) of the Government Code.²

You next contend that the information you highlighted in Exhibit C, as well as all of Exhibits D and E, are excepted from public disclosure pursuant to section 552.122(b) of the Government Code. Section 552.122(b) of the Government Code protects a “test item developed by a . . . governmental body.” Section 552.122(b) is applicable only where the test item constitutes a “standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994). This exception does not apply to evaluations of an employee’s overall job performance or suitability. Open Records Decision No. 626 at 6 (1994). Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *Id.*

After reviewing the information at issue, we agree that two questions in Exhibit C and all of the questions contained in Exhibits D and E constitute a standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated. The city therefore may withhold the information we have marked in Exhibit C and all questions and answers contained in Exhibits D and E pursuant to section 552.122(b) of the Government Code. The remaining highlighted questions contained in Exhibit C must be released to the requestor.

Finally, you contend that the highlighted information in Exhibit F is made confidential under Title I of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. §§ 12101 *et seq.*, and thus must be withheld pursuant to section 552.101 of the Government Code.³ The ADA provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. Even in instances where information does not reveal any specific information about an employee’s medical conditions or medical histories, this office has nevertheless concluded even general information revealing the presence or absence of a pre-existing medical condition must be withheld from the public pursuant to the ADA. *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3-4 (Oct. 1, 1997) (Equal Employment Opportunity Commission determined that “medical information” for purposes of ADA includes “specific information about an individual’s disability and related functional limitations, as well as general statements that

²Because we resolve this portion of your request under section 552.107(1), we need not address the applicability of section 552.111 of the Government Code to this information.

³Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual”). We have marked the information the city must withhold in Exhibit F pursuant to the ADA.

In summary, the city may withhold the information you have highlighted in Exhibit B pursuant to section 552.107(1). The city may also withhold pursuant to section 552.122(b) the information we have marked in Exhibit C as well as Exhibits D and E in their entirety. Finally, the city must withhold pursuant to the ADA the information we have marked in Exhibit F.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/RWP/seg

Ref: ID# 147488

Encl. Submitted documents

cc: Ms. Maria M. Gonzalez
1813 Amazon
Corpus Christi, Texas 78412
(w/o enclosures)