

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 29, 2004

Ms. Heather Silver  
Assistant City Attorney  
City Attorney's Office, Room 7DN  
1500 Marilla Street  
Dallas, Texas 75201

OR2004-9223

Dear Ms. Silver:

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# 212113.

The City of Dallas (the "city") received five requests for information pertaining to the 2004 Fire Captain Assessment Center. You state that the city will provide some of the information to the requestors, but claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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 at 6 (1994). Additionally, when answers to test questions might reveal the substance of the questions themselves, the answers may be withheld from disclosure under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

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<sup>1</sup>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 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 that those records contain substantially different types of information than that submitted to this office.

Having reviewed the submitted information, we agree that most of the information submitted in Exhibits B through P falls within the section 552.122 exception. Therefore, with the exception of the pages we have marked in Exhibits G, O and P, the city may withhold this information under section 552.122(b).

We next examine your claim under section 552.117 of the Government Code, which excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

The information highlighted in yellow in Exhibit Q pertains to a captain of the Los Angeles Fire Department. Because this individual is not a city employee, the city may not withhold any information in Exhibit Q pursuant to section 552.117. However, to the extent that the information highlighted in yellow in Exhibit R pertains to employees who timely elected to keep their personal information confidential, the city must withhold the employees' social security numbers. The city may not withhold this information under section 552.117 if the employee to whom the social security number pertains did not make a timely election to keep the information confidential. We note, however, that the requestors have a special right of access to their own section 552.117 information. *See* Gov't Code § 552.023 (person has special right of access to information held by governmental body that relates to person and is protected from disclosure by laws intended to protect that person's privacy interests). Information to which a requestor has a right of access under section 552.023 may not be withheld under section 552.117.

Social security numbers may also be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of these social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. We note, however, that the requestors have a special right of access to their own social security numbers. *See* Gov't Code § 552.023.

Finally, section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that the member of the public to whom the marked e-mail address belongs has affirmatively consented to the release of the e-mail address. The city must, therefore, withhold the marked e-mail address under section 552.137.

In summary, with the exception of the pages we have marked in Exhibits G, O and P, the city may withhold the information in Exhibits B through P under section 552.122(b). Although the requestors have a special right of access to their own social security numbers, the city must withhold under section 552.117 the social security numbers highlighted in yellow in

Exhibit R if the employees to whom this information pertains timely elected to keep such information confidential. Social security numbers other than the requestors' may also be excepted from disclosure under section 552.101 in conjunction with federal law. The city must withhold the marked e-mail address under section 552.137. The remaining information must be released.

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).

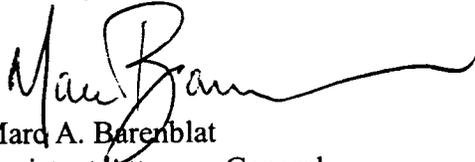
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Marc A. Barenblat  
Assistant Attorney General  
Open Records Division

MAB/jh

Ref: ID# 212113

Enc. Submitted documents

c: Mr. Robert Keaveney  
705 Oak Hollow Lane  
Flower Mound, Texas 75028  
(w/o enclosures)

Mr. Joel Lavender  
8641 Turnberry Lane  
Ovilla, Texas 75154  
(w/o enclosures)

J. A. Green  
365 Barnes Bridge Road  
Sunnyvale, Texas 75182  
(w/o enclosures)

Mr. Steven Fass  
10910 Blackberry Lane  
Frisco, Texas 75034  
(w/o enclosures)

Mr. James Aulbaugh  
PO Box 700813  
Dallas, Texas 75370  
(w/o enclosures)

AUG 03 2006

At 8:56A M.  
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. GV403778

CITY OF DALLAS,  
Plaintiff,

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IN THE DISTRICT COURT OF

V.

TRAVIS COUNTY, TEXAS

GREG ABBOTT, ATTORNEY GENERAL  
OF TEXAS,  
Defendant.

201<sup>ST</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff City of Dallas and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code Ann. § 552.325(c), the requestors were sent reasonable notice of this setting and of the parties' agreement that the City may withhold some of the information at issue; that the requestors were also informed of their right to intervene in the suit to contest the withholding of this information; and that none of the requestors have informed the parties of an intention to intervene. Neither has any requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. Portions of the Behaviorally Anchored Rating Scales for the 2004 Promotional Examination for Fire Captain ('04 Fire Captain BARS), specifically, the information marked on Bates Nos. COD 0000395-397, 399-402, 404-407, 409-412, and 414, are excepted from disclosure by Tex. Gov't Code Ann. § 552.122(b).

2. The City may withhold the information at issue from the requestors.

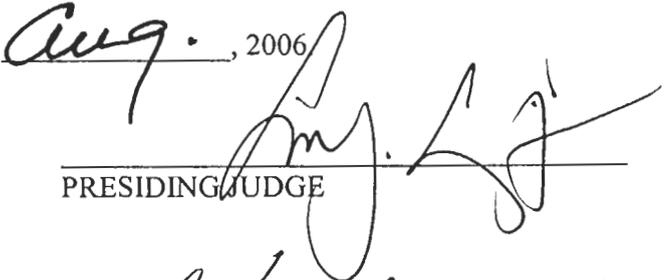
3. The remaining information at issue, including Bates Nos. COD 0000394, 398, 403, and 413, of the '04 Fire Captain BARS, and the unmarked information on the pages enumerated in Paragraph 1 of this Judgment, is not excepted from disclosure under the PIA. If it has not already done so, the City shall release this information to the requestors promptly upon receipt by the City of a copy the Agreed Final Judgment signed by the Court.

4. All costs of court are taxed against the parties incurring the same;

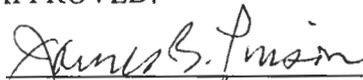
5. All relief not expressly granted is denied; and

6. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

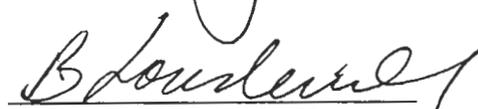
SIGNED this the 3 day of Aug., 2006

  
\_\_\_\_\_  
PRESIDING JUDGE

APPROVED:

  
\_\_\_\_\_  
JAMES B. PINSON

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