



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 9, 2009

Mr. Mark Daniel
Evans, Daniel, Moore & Evans
Sundance Square
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2009-01657

Dear Mr. Daniel:

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# 334331.

The City of Watauga (the "city"), which you represent, received a request for the requestor's applicant file for the city's police department. You state that the city has released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by other statutes. *See* Gov't Code § 552.101. You assert that a portion of the submitted information is excepted under section 552.101 in conjunction with section 1701.454 of the Occupations Code. Section 1701.452 of the Occupations Code requires that a law enforcement agency submit a report to the Texas Commission on Law Enforcement Officer Standards and Education (the "commission") regarding an officer licensed under chapter 1701 who resigns or is terminated by a law enforcement agency. *See* Occ. Code § 1701.452. Section 1701.454 makes such reports, which are commonly referred to as "F-5's," confidential and provides in relevant part:

a) A report or statement submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated instances of excessive force or violations of the law other than traffic offenses.

Id. § 1701.454(a). You assert that a portion of the submitted information is confidential under section 1701.454. We agree that the F-5 form that we have marked is confidential under section 1701.454 of the Occupations Code and must be withheld under section 552.101 of the Government Code. The remaining correspondence between the city, the Fort Worth Police Department, and the commission does not consist of reports submitted to the commission pertaining to an officer's resignation or termination. *See id.* §§ 1701.451(a)(2)(B), 1702.452(b), 1701.454(a). Thus, the remaining information at issue is not confidential under section 1701.454 and may not be withheld under section 552.101 of the Government Code on that basis. As no further exceptions against the disclosure of this information are raised, the city must release it.

Next, you claim the submitted Civil Service Entry Level Examination (the "examination") is excepted under section 552.122 of the Government Code. This section excepts from required public disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). 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. Open Records Decision No. 626 at 6 (1994). The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

Having considered your arguments and reviewed the submitted examination, we find the information we have marked evaluates an individual's or group's knowledge or ability in a particular area for purposes of section 552.122(b). We also find the release of the answers to these questions would tend to reveal the questions themselves. Therefore, pursuant to section 552.122(b) of the Government Code, the city may withhold the information we have marked. We find, however, the remaining information in the submitted examination consists of information that does not test any specific knowledge of an applicant. Accordingly, the remaining information in the submitted examination may not be withheld from disclosure under section 552.122 of the Government Code. As you raise no further exceptions to disclosure for this information, it must be released.

In summary, the city must withhold the F-5 form we have marked under section 552.101 of the Government Code in conjunction with 1701.454 of the Occupations Code. The city may

withhold the information we have marked under section 552.122 of the Government Code. The remaining information must be released to the requestor.¹

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 334331

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

¹We note the information being released contains the requestor's social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147. However, the requestor has a right of access to his own social security number. *See generally id.* § 552.023(b).