



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2010

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2010-13320

Dear Mr. Bounds:

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# 392188.

The City of Corpus Christi (the "city") received a request for eleven categories of information pertaining to the interviewing and hiring for the Assistant Director of Public Health position and another specified position. You indicate you are withholding some of the responsive information under sections 552.130 and 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You also indicate the city will withhold some of the responsive information under section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.² You state the city will make some of the responsive information available to the requestor. You claim that portions of the submitted information are 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.

¹This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including Texas driver's license numbers, Texas license plate numbers, the portion of a photograph that reveals a Texas license plate number, and the portion of any video depicting a discernible Texas license plate number under section 552.130 of the Government Code and the e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

²Section 552.117(a)(1) of the Government Code 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. See Gov't Code §§ 552.117(a)(1), .024(c)(2) (if employee or official or former employee or official chooses not to allow public access to his or her personal information, the governmental body may redact the information without the necessity of requesting a decision from this office).

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we conclude the information you have marked is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the city must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.122 of the Government Code excepts from 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. ORD 626 at 6. 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.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). 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.

You claim that the information you have marked qualifies as test items for purposes of section 552.122(b). Having considered your arguments and reviewed the information at issue, we conclude the interview questions and answers at issue evaluate the applicants’ general workplace skills and overall suitability for employment, but do not test any specific knowledge of the applicants. Accordingly, we determine that no part of the marked information consists of a test item under section 552.122(b). Therefore, the city may not withhold the information you have marked under section 552.122 of the Government Code.

In summary, the city must withhold the information you have marked under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions against disclosure, the city must release the remainder of the submitted information.

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, toll free, at (888) 672-6787.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 392188

Enc. Submitted documents

c: Requestor
(w/o enclosures)