



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 23, 2010

Ms. Bridget Chapman  
Assistant City Attorney  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627

OR2010-14469

Dear Ms. Chapman:

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# 394410.

The City of Georgetown (the "city") received a request for the documents prepared and/or submitted by candidates in the Assistant Chief of Police promotional process in the city's police department (the "department"). You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.122 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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. Section 552.101 encompasses the doctrine of common-law privacy.

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<sup>1</sup>Although you also raise section 552.1175 of the Government Code, the proper exception in this instance is section 552.117 of the Government Code because the city holds the information at issue in an employment context.

<sup>2</sup>We assume 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.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Determinations under common-law privacy must be made on a case-by-case basis. *See Open Records Decision No. 373 at 4 (1983); 540 S.W.2d at 685 (whether matter is of legitimate interest to public can be considered only in context of each particular case).*

In this instance, the information you marked consists of the cover letter and resume of a department officer who applied for the promotion to Assistant Chief of Police, as well as a portion of that officer's response to the position's preliminary questionnaire. This office has stated in numerous decisions that information pertaining to the background, qualifications, and reasons for promotion of public employees is subject to a legitimate public interest and therefore is generally not protected from disclosure under common-law privacy. *Open Records Decision No. 444 (1986); see Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow).* Thus, we conclude there is a legitimate public interest in the information you marked, and no information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy, or section 552.102 of the Government Code.

Section 552.122(b) 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" 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. *Id.* at 6. 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 state the submitted preliminary questionnaire questions and applicant answers are intended to test the applicant's ability to act as a leader in the department. Upon review, we find these questions evaluate applicants' individual abilities, personal opinions, and subjective ability to respond to particular situations they may encounter on the job. They do

not test any specific objective knowledge of an applicant. Accordingly, the submitted preliminary questionnaire questions and their corresponding applicant answers may not be withheld from disclosure under section 552.122 of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. Gov't Code § 552.117(a)(2). "Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure. You inform this office the department officer whose information is at issue is a peace officer for purposes of Article 2.12. Accordingly, we agree the city must withhold the information you marked, as well as the additional information we marked, under section 552.117(a)(2) of the Government Code. As you raise no other exceptions to disclosure, the remaining submitted information must be released.

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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 394410

Enc. Submitted documents

c: Requestor  
(w/o enclosures)