



This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2011

Ms. Jessica Eales
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

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

OR2011-03563

Dear Ms. Eales:

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# 410217 (GC No. 18020).

The Houston Fire Department (the "department") received a request for "[t]he 2010 Houston Fire Department Captain Test that was given on November 17th 2010." You claim the exam is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.122(b) of the Government Code excepts from 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. 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).

You state the test questions "evaluate specific objective knowledge" and "specific objective abilities related to the job of Captain and specific knowledge of the best approaches to hypothetical scenarios." You also state the department "uses the same or similar questions in its selection of applicants for similar positions[.]" and thus release of the questions would compromise future exams. Based on your representations and our review, we agree the test questions evaluate an individual's or group's knowledge or ability in a particular area. *See*

ORD 626 at 6. Accordingly, we find the test questions are test items under section 552.122(b) of the Government Code. However, the requestor claims that release will not compromise future examinations because candidates are allowed to copy the test questions as part of the department's exam appeal process. This office requested additional information regarding the department's appeal process. *See* Gov't Code § 552.303(c). In your response, you state the candidates are allowed to "write down the portions of the questions that they remember" and "are allowed to keep these notes." You state this is necessary "because, as part of the appeal process, the candidates need to explain why they believe their answer [to a test question] was correct and why the answer coded as correct was incorrect." Although you state "candidates are only supposed to copy the questions they plan to appeal," you acknowledge that candidates are allowed to leave the exam review site with copies of test questions. In fact, the requestor has provided this office with verbatim copies of multiple test questions candidates were allowed to keep which were either copied down by the candidates themselves or a person overseeing the exam review process. In addition, the requestor has provided a representation from another candidate that a person overseeing the exam review process copied test questions and answers for the candidate verbatim and did not request this information be returned to the department. Because the department allows candidates to leave the exam review site with verbatim copies of any test questions the candidates plan to appeal, we find the department has failed to demonstrate that releasing the test questions would compromise the effectiveness of future examinations. *See* ORD Nos. 626 at 4-5, 118. Accordingly, the submitted information must be released in its entirety to the requestor.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/egg

Ref: ID# 410217

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Filed In The District Court
of Travis County, Texas
on 1/21/15
at 850AM.
Veiva L. Price, District Clerk

Cause No. D-1-GV-11-000464

THE CITY OF HOUSTON, TEXAS,	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
	§	
v.	§	98th JUDICIAL DISTRICT
	§	
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
<i>Defendant.</i>	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

This cause of action is brought under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff City of Houston, Texas (Houston) sought to withhold certain information from public disclosure. All matters in controversy between Houston and Defendant Greg Abbott, Attorney General of Texas (Attorney General), arising out of this lawsuit have been resolved, and the parties agree to the entry and filing of an agreed final judgment.

Texas Government Code section 552.325(d) requires the Court to allow a requestor a reasonable period of time to intervene after notice is attempted by the Attorney General. The Attorney General represents to the Court that in compliance with section 552.325(c), the Attorney General sent a letter by certified mail and electronic mail to the requestor, Mr. John Franco, on December 30, 2014 providing reasonable notice of this setting. The requestor was informed of the parties' agreement that Houston may withhold the information at issue. The requestor was also informed of his right to intervene in the suit to contest Houston's right to withhold the information. The requestor has not filed a motion to intervene.



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. The information at issue, the Houston Fire Department's captain promotional examination administered on November 17, 2010, is excepted from public disclosure pursuant to section 552.122 of the Texas Government Code.

2. Houston may withhold from the requestor the information described in Paragraph 1 of this order.

3. All court cost and attorney fees are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

5. This Agreed Final Judgment finally disposes of all claims between Houston and the Attorney General and is a final judgment.

SIGNED the 21st day of January, 2015.

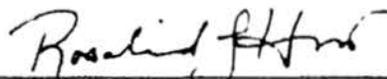
Michelle D. Inaric
PRESIDING JUDGE

AGREED:



TIMOTHY J. HIGLEY
State Bar No. 09618400
Senior Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368
Telephone: (832) 396-6259
Facsimile: (832) 393-6259
Timothy.Higley@houstontx.gov

ATTORNEY FOR PLAINTIFF
THE CITY OF HOUSTON, TEXAS



ROSALIND L. HUNT
State Bar No. 24067108
Assistant Attorney General
Administrative Law Division
Office of the Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4166
Facsimile: (512) 457-4677
Rosalind.Hunt@texasattorneygeneral.gov

ATTORNEY FOR DEFENDANT
ATTORNEY GENERAL OF TEXAS