



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 30, 2011

Ms. Victoria Huynh  
Deputy City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086

OR2011-09372

Dear Ms. Huynh:

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# 422484.

The City of Plano (the "city") received requests for the meeting packet and recording of an April 19, 2011 public meeting concerning the appeal of the captain's promotional exam. The city claims the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

The submitted information consists of the recording and minutes of an open meeting. Section 551.022 of the Government Code expressly provides that the "minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." Gov't Code § 551.022. Therefore, the submitted information is generally public.

However, the city asserts the information contains information made confidential by section 143.032(h) of the Local Government Code. 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 protected by other statutes. *Id.* § 552.101. Chapter 143 of the Local Government Code applies to a civil

service city.<sup>1</sup> Section 143.032(h) provides a person commits an offense if the person knowingly or intentionally reveals a part of a promotional examination to an unauthorized person. Local Gov't Code § 143.032(h); *see also id.* § 143.032(i) (classifying violation of subsection (h) as criminal offense). Eligible promotional candidates from a fire department are entitled to inspect their own promotional examination and answers, the examination grading, and the source material for the examination. *Id.* § 143.034(a); *see also id.* § 143.034(b) (prohibiting eligible promotional candidate from removing examination or copying examination questions). We agree section 143.032 makes the promotional examination questions and answers, as "part of a promotional examination," confidential and permits their disclosure only to an authorized person. *Cf.* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101). The city explains the requestors did not take the promotional examination at issue. Thus, the requestors are not authorized persons who may receive the examination questions and answers. Therefore, the examination questions and answers are confidential under section 143.032(h).

Thus, a conflict of laws exists between section 551.022 of the Government Code and section 143.032(h) of the Local Government Code. Where information falls within both a general and a specific statutory provision, the specific statutory provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *See* Gov't Code § 311.026; *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones).

Section 143.032(h) addresses the confidentiality of a promotional examination only, whereas section 551.022 applies to the minutes of an open meeting relating to any agenda item. Therefore, we find the confidentiality protection afforded by section 143.032(h) is more specific than section 551.022. Although section 551.022 was later enacted,<sup>2</sup> we have no indication the legislature intended that section 551.022 prevail over section 143.032(h). Therefore, because section 143.032(h) is the more specific statute, we find section 143.032(h) prevails over section 551.022. Accordingly, the city must withhold the examination questions and answers from the recording and the examinations questions and answers we marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 143.032(h) of the Local Government Code.

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<sup>1</sup>We understand the city is a civil service city under chapter 143 of the Local Government Code.

<sup>2</sup>Act of May 31, 1987, 70th Leg., R.S., ch. 549, § 4, 1987 Tex. Gen. Laws 2211, 2213(Vernon) (codified as section 551.022 of the Government Code); Act of May 28, 1979, 66th Leg., R.S., ch. 753, § 14, 1979 Tex. Gen. Laws 1856, 1862 (Vernon) (codified as section 143.032(h) of the Local Government Code).

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,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/sdk

Ref: ID# 422484

Enc. Marked documents

c: 2 requestors  
(w/o enclosures)