



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 2, 2011

Ms. Kelley Messer
Assistant City Attorney
City of Abilene
P.O. Box 60
Abilene, Texas 79604-0060

OR2011-11139

Dear Ms. Messer:

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# 425668.

The City of Abilene (the "city") received two requests from two different requestors for scoring sheets completed by evaluators in a specified promotion exam.¹ You state you have released some of the requested information to each requestor. You claim 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 representative sample of information.²

You state the portions of the submitted information consisting of the exam questions are not responsive to the instant requests for information because each requestor has consented to the redaction of the exam questions. We note additional portions of the submitted information, which we have marked, are not responsive to the requests for information

¹You state the city received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

²We 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 those records contain substantially different types of information than that submitted to this office.

because they do not consist of scoring sheets completed by an evaluator. This ruling does not address the public availability of any information that is not responsive to the request and the city is not required to release such information in response to this request.

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 information protected by other statutes. You claim section 552.101 in conjunction with section 142.064 of the Local Government Code, which states the following:

(a) An agreement under this subchapter is enforceable and binding on the public employer, the recognized police officers association, and the police officers covered by the meet and confer agreement only if:

(1) the governing body of the municipality ratified the agreement by a majority vote; and

(2) the recognized police officers association ratified the agreement by conducting a secret ballot election at which the majority of the police officers who would be covered by the agreement favored ratifying the agreement.

(b) A meet and confer agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on a question involving interpretation of the agreement.

(c) A state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified meet and confer agreement on the application of a party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

See Local Gov’t Code § 142.064. You inform us that the city and the Abilene Police Officers’ Association are parties to a Meet and Confer Agreement (the “agreement”) under subchapter B of chapter 142 of the Local Government Code. *See id.* § 142.067 (meet and confer agreement supersedes conflicting state and local laws). You state article 5 of the agreement provides for an assessment center component of the promotional exam. You argue the success of the exam requires the anonymity of the assessors’ comments and non-disclosure of the exam questions. Thus, you claim the submitted assessor scoring sheets are

confidential under section 142.064(a) on the basis of article 5 of the agreement. You have submitted article 5 of the agreement for our review.

First, we note the language of section 142.064 provides the conditions under which an agreement ratified under Subchapter B of Chapter 142 of the Local Government Code is enforceable and binding on a public employer; the contents of such an agreement; and the resolution of disputes under such an agreement. *See id.* The statute does not by its express terms make information confidential or restrict access to any information. For information to be confidential under section 552.101, the provision of law must expressly require confidentiality; a confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality under statutory predecessor to section 552.101 required express language making certain information confidential or stating that information shall not be released to public), 465 at 4-5 (1987) (statute explicitly required confidentiality). Therefore, you have not established, and it is not otherwise apparent to this office, how section 142.064 of the Local Government Code makes confidential any of the information you seek to withhold. We therefore conclude the city may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 142.064 of the Local Government Code.

Next, although you argue the submitted assessors' scoring sheets and comments are confidential under article 5 of the agreement, we note that article 5 merely outlines the procedures of the promotional process. It does not expressly make the submitted scoring sheets confidential. Consequently, we conclude the city may not withhold any portion of the submitted information under section 552.101 on the basis of the city's agreement.

Section 552.122 of the Government Code 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 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 seek to withhold comments of the evaluators within the submitted documents because, you argue, the comments are "answers" to test items and are subject to section 552.122. On review, we find you have not demonstrated how any portion of the responsive information

evaluates an individual's or group's knowledge or ability in a particular area. Rather, the submitted information evaluates an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test any specific knowledge of an applicant. We therefore conclude the responsive information does not constitute answers to test items for purposes of section 552.122(b) and may not be withheld under section 552.122 of the Government Code. As you raise no other exceptions to disclosure, the responsive information must be released in its entirety.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 425668

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)