



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2011

Mr. Benjamin Sampract  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, Third Floor  
Fort Worth, Texas 76102

OR2011-14559

Dear Mr. Sampract:

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# 432376 (Fort Worth PIR# W010393).

The City of Fort Worth (the "city") received a request for the interview and application records for a specified position. You state you have redacted personal information subject to section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code, as well as social security numbers under section 552.147 of the Government Code.<sup>1</sup> You state you have redacted certain Texas motor vehicle record information under section 552.130 of the Government Code pursuant to previous

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<sup>1</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code § 552.024(c), Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

determinations issued to the city.<sup>2</sup> See Open Records Decision No. 673 at 7-8 (2001) (previous determinations). We note you have also redacted personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>3</sup> You state you will release some of the requested information to the requestor. You claim that some of 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 information.

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 if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). This office has also found, however, that the public has a legitimate interest in information relating to the background and qualifications of employees of governmental

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<sup>2</sup>Open Records Letter No. 2006-14726 (2006) is a previous determination authorizing the city to withhold a Texas driver’s license number, a Texas-issued state identification number, a Texas license plate number, and a Texas license year of a motor vehicle under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. Open Records Letter No. 2007-00198 (2007) is a previous determination authorizing the city to withhold class designations, restrictions, expiration dates, license years for Texas-issued driver’s licenses of living individuals, and vehicle identification numbers relating to a title or registration issued by an agency of the State of Texas in which a living individual owns an interest under section 552.130, without the necessity of requesting an attorney general decision. However, as of September 1, 2011, section 552.130 allows a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. See Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov’t Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, § 22 (to be codified at Gov’t Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Letter Nos. 2006-14726 and 2007-00198. Therefore, the city may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Letter Nos. 2006-14726 and 2007-00198. The city may continue to redact information subject to section 552.130(a)(2) pursuant to Open Records Letter No. 2007-00198.

<sup>3</sup>We note this office issued Open Records Decision No. 684, a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an 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.

bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Although the references to an employee's previous salaries may be considered highly intimate or embarrassing, we find there is a legitimate public interest in this information as it pertains to an employee's employment qualifications and background. *See* Open Records Decision No. 455 at 9 (1987) (applicant salary information is of legitimate public interest because it "bears on the applicants' past employment record and their suitability for the employment position in question"). Thus, the city may not withhold the references to the employees' previous salaries under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.122 of the Government Code exempts 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 seek to withhold the submitted interview questions, as well as the actual and model answers to those questions, under section 552.122. You argue that release of this information would be disadvantageous to the selection process and jeopardize the effectiveness of future examinations. Having considered your arguments and reviewed the information at issue, we conclude that "Code Compliance Superintendent-Code Compliance Interview Panel Questions" numbers 5, 6, and 11, along with the actual and model answers to these questions, qualify as test items for the purposes of section 552.122(b). Additionally, we conclude that "Code Compliance Superintendent Panel Interview Questions" number 7, along with the actual and model answers to this question, qualify as test items for purposes of section 552.122(b). Accordingly, we conclude that the city may withhold this information under section 552.122 of the Government Code. However, we find the remaining interview questions evaluate an applicant's individual abilities, general workplace skills, and subjective ability to respond to a particular situation, and do not test any specific knowledge of an applicant. Accordingly, we determine the remaining interview questions, as well as their actual and model answers, are not test items under section 552.122(b) of the Government Code and therefore may not be withheld on this basis.

In summary, the city may withhold "Code Compliance Superintendent-Code Compliance Interview Panel Questions" numbers 5, 6, and 11 and "Code Compliance Superintendent

Panel Interview Questions” number 7, along with the actual and model answers to these questions, under section 552.122(b) of the Government Code. The remaining 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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 432376

Enc. Submitted documents

c: Requestor  
(w/o enclosures)