



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 2, 2012

Ms. Michelle M. Kretz  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2012-15686

Dear Ms. Kretz:

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# 466603 (Fort Worth PIR # W18110).

The City of Fort Worth (the "city") received a request for information pertaining to two named individuals and two specified positions, including all e-mails between four named individuals discussing one of the specified positions for a specified time period.<sup>1</sup> You state the city will release some of the requested information. You state the city will redact social security numbers of living individuals other than the requestor under section 552.147(b) of the Government Code.<sup>2</sup> You claim that the submitted information is excepted from disclosure under sections 552.102, 552.111, 552.117, 552.122, 552.130, and 552.137 of the

---

<sup>1</sup>You inform us the city provided the requestor with an estimate of charges and a request for a deposit for payment of those charges on July 10, 2012. See Gov't Code §§ 552.2615, 263(a). You state the city received a deposit for payment of the anticipated costs on July 12, 2012. Thus, July 12, 2012 is the date on which the city is deemed to have received the request. See *id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond).

<sup>2</sup>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). The requestor has a right, however, to his own social security number. See *generally id.* § 552.023 (governmental body may not deny access to person to whom information relates solely on grounds that information is considered confidential by privacy principles).

Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we conclude the information you have marked, and the additional information we have marked, must be withheld under section 552.102(a) of the Government Code.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. Section 552.111 encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. ORD 615 at 5; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). A governmental body’s policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body’s policy mission. *See* Open Records Decision No. 631 at 3 (1995). However, a governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. ORD 615 at 5-6; *see also Dallas Morning News*, 22 S.W.3d at 364 (section 552.111 not applicable to personnel-related communications that did not involve policymaking).

This office also has concluded a preliminary draft of a document that has been or is intended for public release in its final form necessarily represents the drafter’s advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining,

deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

You seek to withhold the submitted draft interview questions and correspondence discussing the interview questions under section 552.111. However, upon review, we find this information, which relates to the hiring process for a single position within the city, is an administrative matter. You do not explain how this information pertains to administrative or personnel matters of a broad scope that affect the city's policy mission. Therefore, you have failed to demonstrate how the deliberative process privilege applies to the information at issue. Accordingly the city may not withhold the information at issue under section 552.111 of the Government Code.

You state the city will withhold the personal information you have marked that pertains to city employees pursuant to Open Records Decision No. 670 (2001), which authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without the necessity of requesting an attorney general decision. ORD 670; *see also* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. However, none of the submitted information pertains to a peace officer. As such, the city may not withhold any of the information at issue under section 552.117(a)(2) of the Government Code.

Section 552.117(a)(1) 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 employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers and home facsimile numbers, provided the cellular telephone service or facsimile number is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the information you have marked and the additional information we have marked must be withheld under section 552.117(a)(1) of the Government Code, including the personal cellular telephone number and home facsimile number if the individuals pay for the cellular telephone service and facsimile number with personal funds. The city may not withhold the marked

information under section 552.117 if the individuals did not make timely elections to keep the information confidential.

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. *See 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 claim the interview questions and model answers you have marked are excepted from disclosure under section 552.122(b). You argue that the release of this information would be “disadvantageous to the selection process and would jeopardize the effectiveness of future examinations.” Having considered your arguments and reviewed the information at issue, we find interview question number five evaluates an applicant’s specific knowledge or ability in a particular area and, thus, qualifies as a “test item” under section 552.122(b). We also find the release of the model answer to question five would tend to reveal the question itself. Therefore, the city may withhold interview question number five and its model answer under section 552.122(b) of the Government Code. We find, however, the remaining interview questions you have marked only evaluate an applicant’s general workplace skills, individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. Accordingly, we conclude the remaining interview questions you have marked, as well as the model answers to these questions, are not test items under section 552.122(b) and therefore may not be withheld on this basis.

You state the city will withhold the information you have marked under subsection 552.130(a)(1) pursuant to section 552.130(c) of the Government Code. Section 552.130(c) 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* Gov’t Code § 552.130(c). However, we note you have marked information that is not subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator’s or driver’s license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. *Id.* § 552.130(a). We note section 552.130 does not protect the state of issuance of a driver’s license. Accordingly, with the exception of the information we have marked for release, the city must withhold the information you have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses you have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.<sup>3</sup>

In summary, the city: (1) must withhold the information you have marked and the additional information we have marked under section 552.102(a) of the Government Code; (2) must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality and if the individuals pay for the cellular telephone service and facsimile number with personal funds; (3) may withhold interview question number five and its model answer under section 552.122(b) of the Government Code; (4) must withhold the information you have marked under section 552.130 of the Government Code, with the exception of the information we have marked for release; and (5) must withhold the e-mail addresses you have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The city must release the remaining information.<sup>4</sup>

---

<sup>3</sup>We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain 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.

<sup>4</sup>We note the information being released contains the requestor’s personal information and personal e-mail address, which the city might be required to withhold from the general public under sections 552.117(a)(1) and 552.137 of the Government Code, respectively. Because these exceptions protect personal privacy, the requestor has a right of access to his own information. *See Gov’t Code* § 552.023(a) (person has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Should the city receive another request for this information from a different requestor, the city is authorized to withhold the requestor’s personal information under section 552.024(c) of the Government Code without requesting a decision under the Act if the requestor timely requested confidentiality for the information. *See Gov’t Code* § 552.024(c). Additionally, as previously noted, Open Records Decision No. 684 authorizes the city to withhold the requestor’s e-mail address under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive, flowing style.

Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/ag

Ref: ID# 466603

Enc. Submitted documents

c: Requestor  
(w/o enclosures)