



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2013

Mr. Stephen A. Cumbie
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, Third Floor
Fort Worth, Texas 76102

OR2013-11594

Dear Mr. Cumbie:

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# 492808 (Fort Worth PIR No. W025193).

The City of Fort Worth (the "city") received a request for applications, resumes, any other supporting documents and anything relating to the interview notes/scoring for the five individuals interviewed for a specified position. You state the city has released some of the requested information and is releasing some of the remaining requested information. You claim portions of the submitted information are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122 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 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 release of the marked interview questions and answers would be disadvantageous to the selection process and would compromise future examinations. Based on your representations and our review, we conclude the information we have marked qualifies as “test items” under section 552.122(b) of the Government Code. We also find the release of the model answer and the individuals’ answers to this question would tend to reveal the question itself. Therefore, the city may withhold the question and answers we have marked under section 552.122(b) of the Government Code. However, you have failed to demonstrate the remaining information you have marked qualifies as “test items” under section 552.122(b) of the Government Code. Thus, the city may not withhold the remaining information you have marked on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024.¹ Gov’t Code § 552.117(a)(1). We note the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See id.* § 552.117(a)(1) (providing that employees of governmental entities may protect certain personal information in the hands of their employer); Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information or not later than the 14th day after the date on which the employee began employment with the city. *See* Gov’t Code § 552.024(b). Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, if the information we have marked pertains to an applicant who was ultimately hired, the city must withhold such information under section 552.117(a)(1) if the individual at issue timely requested confidentiality under section 552.024. Conversely, if the information we have marked pertains to an applicant who was not ultimately hired or an employee who did not timely request confidentiality under section 552.024, the city may not withhold such information under section 552.117(a)(1) of the Government Code.

In summary, the city may withhold the question and answers we have marked under section 552.122(b) of the Government Code. If the information we have marked pertains to

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

an applicant who was ultimately hired, the city must withhold such information under section 552.117(a)(1) if the individual at issue timely requested confidentiality under section 552.024. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 492808

Enc. Submitted documents

c: Requestor
(w/o enclosures)