



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2013

Mr. Robert J. Davis  
Counsel for Collin County  
Matthews, Stein, Shiels, Pearce, Knott, Eden, & Davis, L.L.P.  
8131 LBJ Freeway, Suite 700  
Dallas, Texas 75251

OR2013-22206

Dear Mr. Davis:

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# 509240 (File No. 1600-65575).

Collin County (the "county"), which you represent, received a request for the physical requirements of the test taken by prospective applicants for the position of deputy constable, documented certifications, re-certifications, and information pertaining to specified equipment, and the requestor's physical agility test, including the staff members' names, positions, certifications, and/or licenses required to hold their positions as health care providers. 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 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. Section 552.101 encompasses information made confidential by other statutes, such as the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12101 *et seq.* The ADA provides that a covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination provided that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, andn 3) treated as a confidential medical record. 42 U.S.C. § 12112(d)(3)(B); *see also* 29 C.F.R. § 1630.14(b);

Open Records Decision No. 641 (1996). A portion of the submitted information consists of a "Post-Offer Pre-Employment Physical" which consists of summaries of physical examinations conducted upon a candidate for the position of deputy constable. Upon review, we find the county must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with the ADA.<sup>1</sup> However, we find you have failed to demonstrate the remaining information is subject to the ADA. Therefore, the county may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs access to medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find none of the remaining information constitutes a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the county may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.122 of the Government Code excepts 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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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.

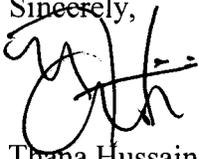
Upon review, we find you have failed to demonstrate how the remaining information consists of test items under section 552.122(b) of the Government Code. Accordingly, the county may not withhold any of the remaining information under section 552.122(b) of the Government Code.

In summary, the county must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the ADA. The county must release the remaining information.

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](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,



Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 509240

Enc. Submitted documents

c: Requestor  
(w/o enclosures)