



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 24, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2016-04367

Dear Ms. Sheely:

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# 599384.

The Travis County Civil Service Commission (the "commission") received a request for audio recordings pertaining to the lieutenant promotional board's 2015 promotional process and a list of the lieutenant promotional board candidates' scores.¹ You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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

¹We note the commission sought and 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); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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.

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 submitted information constitutes test items. You also state release of the information at issue would compromise future examinations of promotional board candidates. Based on your representations and our review, we agree some of the information at issue consists of a “test item” under section 552.122(b) of the Government Code. Furthermore, we find release of the answer to the question would reveal the question itself. Therefore, the commission may withhold the question and answer we have indicated under section 552.122(b) of the Government Code. However, we find the remaining information only evaluates the applicant’s general workplace skill, subjective ability to respond to particular situations, and overall suitability for employment, and does not test any specific knowledge of the applicant. Accordingly, we determine the information at issue does not consist of test items under section 552.122(b) of the Government Code. Therefore, the commission may not withhold the remaining information under section 552.122 of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* 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. In this instance, however, it is unclear whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. Accordingly, to the extent the individual is a currently-licensed peace officer as defined by article 2.12, the commission must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. Conversely, if the individual at issue is not a currently-licensed police officer as defined by article 2.12, the information we have indicated may not be withheld under section 552.117(a)(2) of the Government Code.

If the individual at issue is not a currently-licensed peace officer, then her personal information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information,

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, to the extent the individual whose information we have indicated timely requested confidentiality under section 552.024 of the Government Code, the commission must withhold the information we have indicated under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual at issue did not timely request confidentiality under section 552.024, the commission may not withhold the information we have indicated under section 552.117(a)(1).

In summary, the commission may withhold the question and answer we have indicated under section 552.122(b) of the Government Code. If the individual at issue is a currently-licensed peace officer as defined by article 2.12, then the commission must withhold the information we have indicated under section 552.117(a)(2) of the Government Code. If the individual at issue is not a currently-licensed peace officer, then, to the extent the individual at issue timely requested confidentiality pursuant to section 552.024, the commission must withhold the information we have indicated under section 552.117(a)(1) of the Government Code. The commission 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, 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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 599384

Enc. Submitted documents

c: Requestor
(w/o enclosures)