



November 29, 2001

Ms. Kimberley Mickelson
Olson & Olson
333 Clay Street, Suite 3485
Houston, Texas 77002

OR2001-5559

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155447.

The City of Friendswood (the "city"), which you represent, received six requests for information requesting copies of the following:

1. All documents and contracts which relate to the hiring of the company that is conducting a search and screening process for the job opening of Police Chief.
2. All applications received for the job opening of Chief of Police.
3. All documents which reflect the qualifications that are being sought of Chief of Police applicants.
4. All documents contained in Robert Weiners personnel file.
5. All correspondence/documents received by any city employee/representative from the company conducting the applicant search for Chief of Police
6. All correspondence/documents sent to employee/representative of the company conducting the applicant search for Chief of Police.

You state that you have released all information that is responsive to request items 1 and 4. You also state that you will release all information that is responsive to request items 2 and 3. You claim, however, that a portion of the submitted information that is responsive to request items 5 and 6 is not "public information" under section 552.002 of the Government Code. In the alternative, you claim that this information, along with the remaining submitted information, is excepted from disclosure under section 552.122(b) of the Government Code. We have considered your claims and have reviewed the submitted documents.

You claim that pages I-4 through I-10 of the submitted information do not constitute "public information" pursuant to section 552.002 of the Government Code. Section 552.002 defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Public Information Act (the "Act"), if a governmental body owns or has a right of access to the information. *See* Open Records Decision Nos. 462 (1987), 445 (1986); *cf.* Open Records Decision No. 499 (1988).

We note that the Act does not ordinarily require a governmental body to obtain information that is not in its possession. *See* Open Records Decision Nos. 445 (1986), 317 (1982). However, in some instances, the Act does apply to information collected or maintained by third party consultants or contractors of governmental bodies. *See* Open Records Decision No 462 (1987). Where a third body has prepared information on behalf of a governmental body, the information is subject to the Act, even though it is not in the governmental body's custody. *See* Open Records Decision No. 558 (1990). Moreover, if a governmental entity employs an agent to carry out a task that otherwise would have been performed by the entity itself, information relating to that task that has been assembled or maintained by the agent is subject to disclosure under the Act. *See* Open Records Decision Nos. 585 (1991), 445 (1986) (information prepared by private entity at request or under direction of city subject to disclosure), 437 (1986) (overruled by Open Records Decision No. 585 (1991) to the extent it suggests that a governmental body can waive its right of access to information gathered on behalf of a governmental body).

You state that the city does not collect, assemble, maintain, or own this information and does not have a right of access to it. Although you assert that this information is owned and controlled by a consultant that the city hired for the purpose of conducting a search for a new Chief of Police for the city, you provide no support for that assertion. We note that the copy of the contract between the city and the consultant that you submitted to us for review does not address whether the city owns, controls, or has a right of access to the submitted information. You indicate that the consultant prepared the information contained in pages I-4 through I-10 for the purpose of conducting interviews of applicants for this position. We presume from our review of your representations and the submitted

information, including the submitted contract between the city and consultant, that the consultant acted as agent for the city and prepared the information at issue for the city's use in selecting an individual for the position of Chief of Police. Because you do not demonstrate otherwise, we conclude that pages I-4 through I-10 of the submitted information constitute "public information" under section 552.002 of the Government Code. Accordingly, we address your claim regarding section 552.122(b) of the Government Code with respect to the entirety of the submitted information.

Section 552.122(b) of the Government Code exempts from disclosure test items developed by a licensing agency or governmental body. *See* 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. Whether information is encompassed by section 552.122(b) must be determined on a case-by-case basis. *See* Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *See id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Based on our review of your arguments and the submitted information, pages I-4 through I-10 and pages C-1 through D-26, we conclude that none of this information constitutes "test items" as contemplated by section 552.122(b). Accordingly, the city must release the entirety of the submitted information to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

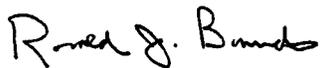
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 155447

Enc. Submitted documents

cc: Mr. Jeff Branscome
308 Woodstream
Friendswood, Texas 77546
(w/o enclosures)