



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2009

Ms. Cheryl K. Byles
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2009-08358

Dear Ms. Byles:

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# 346303 (FW PIR No. 2791-09).

The City of Fort Worth (the "city") received a request for the interview records and scores for all candidates who interviewed for a specified position. You claim portions of the requested interview and score records are excepted from disclosure under sections 552.122 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which is a representative sample.¹

You claim the requested interview questions and model answers are excepted under section 552.122 of the Government Code, which 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. Open Records Decision No. 626 at 6 (1994). 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

¹We 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.

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.

Having considered your arguments and reviewed the interview questions and model answers you marked, we find the information consists of general questions or statements evaluating an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and does not test any specific knowledge of an applicant. Accordingly, no part of the marked questions and answers may be withheld from disclosure under section 552.122 of the Government Code. As you raise no further exceptions to disclosure for this information, it must be released.

You claim the e-mail addresses you have marked in the submitted candidate ranking matrix are protected under section 552.137 of the Government Code, which 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). *See* Gov't Code § 552.137(a)-(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The marked e-mail addresses are not specifically excluded by section 552.137(c). We note, however, two of the marked e-mail addresses are maintained by the city for two of its employees. Consequently, these addresses, which we have marked for release, may not be withheld under section 552.137. Thus, with the exception of the e-mail addresses marked for release, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

The remaining information in the candidate ranking matrix includes home and cellular telephone numbers that may be protected under section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Additionally, section 552.117 encompasses personal cellular telephone numbers, provided the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to

²The 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 Nos. 481 (1987), 480 (1987), 470 (1987).

personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Whether 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). The city may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

It appears some of the people listed in the candidate ranking matrix are current or former city employees. You have not informed us any of the listed people are current or former city employees who timely chose to not allow public access to their personal information. Furthermore, you have not informed us whether or not they paid for their cellular telephone service. Therefore, if the telephone numbers we have marked are home or personal cellular telephone numbers of current or former city employees who timely requested confidentiality for their personal information, the city must withhold the marked telephone numbers pursuant to section 552.117(a)(1) of the Government Code. Otherwise, the marked telephone numbers must be released.

In summary, with the exception of the e-mail addresses we have marked for release, the city must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure. If the telephone numbers we have marked are home or personal cellular telephone numbers of current or former city employees who timely requested confidentiality for their personal information, the city must withhold the marked telephone numbers pursuant to section 552.117(a)(1) of the Government Code. The remaining information must be released.³

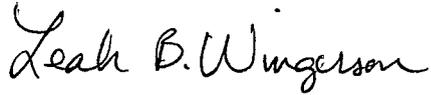
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, or call the Office of the Attorney General's Open Government Hotline, toll free,

³The remaining information contains the requestor's home telephone number. Because this information may be confidential with respect to the general public, if the city receives another request for this particular information from a different requestor, the city should again seek a decision from this office. *See* Gov't Code § 552.023(a) (person or person's authorized representative 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).

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 at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 346303

Enc. Submitted documents

c: Requestor
(w/o enclosures)