



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2009

Mr. Ronald J. Bounds
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2009-14918

Dear Mr. Bounds:

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# 359353.

The City of Corpus Christi (the "city") received three requests from two different requestors for four categories of information pertaining to a specified job position and its applicants. You state you will release some of the requested information to the requestor. You also state you have redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.122, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code § 552.301(e)(1)(D)*. You inform us that the city received the

¹We note that section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office.

initial request for information on August 13, 2009. Although you submitted some of the responsive information by the fifteen-business-day deadline, a portion of the responsive information was not submitted until October 16, 2009. Consequently, with respect to the additional interview questions and answers submitted on October 16, 2009, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You seek to withhold the information at issue under section 552.122 of the Government Code. However, section 552.122 is a discretionary exception under the Act and does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Thus, your claim under section 552.122 does not provide a compelling reason for non-disclosure with respect to the additional information submitted on October 16, 2009, and none of the additional information, which we have marked, may be withheld on that basis. We note that a portion of the additional information is subject to section 552.117 of the Government Code. Because section 552.117 can provide a compelling reason to withhold information, we will address this exception for the additional information. We will also address your arguments for the timely submitted information, including your argument under section 552.122 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 that this information be kept confidential under section 552.024. *See* Gov't Code § 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 received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 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 information was received. In this case, you inform us, and provide documentation showing, that the individuals whose information is at issue timely elected confidentiality under section 552.024. Thus, the city must withhold the information you have marked, as well as the additional information we have marked under section 552.117(a)(1) of the Government Code.

We next turn to your argument under section 552.122 of the Government Code, which 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" 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 falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6. 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); Open Records Decision No. 626 at 8 (1994).

You have marked the portions of the remaining information you assert are subject to section 552.122. You state that the written exercise and answers that you have marked are "intended to display the technical expertise and job-related knowledge of the applicants" and reveals the city's "evaluations of the applicants' specific knowledge pertaining to high level supervisory tasks such as employee salary calculation, [c]ity park location calculations, and budget preparation." Upon review, we agree that the written exercise evaluates the applicants' specific knowledge or ability in a particular area. We also find that the answers to this written exercise would reveal the exercise question itself. Accordingly, the city may withhold the written exercise and corresponding answers you have marked under section 552.122(b) of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the city must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code 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), (b). We find that the e-mail addresses you have marked are not a type specifically excluded by section 552.137(c). Gov't Code § 552.137(c). Further, you state that you have not received affirmative consent from the owners of the e-mail addresses for their release. Therefore, the city must withhold the marked e-mail addresses pursuant to section 552.137.

In summary, the city must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1) of the Government Code. The city may withhold the marked written exercise and its answers under section 552.122(b) of the Government Code. The city must withhold the information you have marked under section 552.130 of the Government Code and the e-mail addresses you

have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 359353

Enc. Submitted documents

c: Requestor
(w/o enclosures)