



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2009

Ms. Susan Camp-Lee
Sheets & Crossfield
309 East Main Street
Round Rock, Texas 78664-5246

OR2009-15935

Dear Ms. Camp-Lee:

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# 360837 (City Request No. 168).

The City of Round Rock (the "city"), which you represent, received a request for all documents concerning the disposition of the requestor's employment application. You claim that the requested 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 of the Government Code encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC"). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information in accordance with chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may only release CHRI to another criminal

justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Thus, the city must withhold Exhibit D, which consists of CHRI, under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. *See id.* § 411.083(b)(3). However, we determine that no portion of the remaining information constitutes CHRI generated by either the TCIC or NCIC databases. Therefore, no portion of the remaining information is confidential under chapter 411, and none of it may be withheld under section 552.101 on that basis.

Section 411.192 of the Government Code is also encompassed by section 552.101. Section 411.192 governs the release of all information maintained by DPS concerning the licensure of individuals to carry a concealed handgun, and provides as follows:

(a) [DPS] shall disclose to a criminal justice agency information contained in its files and records regarding whether a named individual or any individual named in a specified list is licensed under this subchapter. Information on an individual subject to disclosure under this section includes the individual's name, date of birth, gender, race, and zip code. Except as otherwise provided by this section and by Section 411.193, all other records maintained under this subchapter are confidential and are not subject to mandatory disclosure under the open records law, Chapter 552.

(b) An applicant or license holder may be furnished a copy of disclosable records regarding the applicant or license holder on request and the payment of a reasonable fee.

(d) This section does not prohibit the department from making public and distributing to the public at no cost lists of individuals who are certified as qualified handgun instructors by the department.

Id. § 411.192(a), (b), (d). Exhibit C consists of information that is related to a concealed handgun license. It appears that the city received the concealed handgun license information from DPS. In this instance, the requestor is not a criminal justice agency, nor is the requestor the license holder. Accordingly, the city must withhold Exhibit C under section 411.192 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find that none of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, the city may not withhold any of the remaining information under section 552.101 on the basis of common-law privacy.

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 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.

You seek to withhold the submitted interview questions, as well as the recommended and actual answers to those questions, and an examination under section 552.122. Having considered your arguments and reviewed the information at issue, we conclude that the examination, which we have marked, qualifies as a test item for the purposes of section 552.122(b). Accordingly, the city may withhold the examination, along with the recommended and actual answers to this examination, under section 552.122 of the Government Code. We find, however, that the interview questions are general questions and statements evaluating the applicants' general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine that the interview questions are not test items under section 552.122(b), and the city may not withhold this information under section 552.122 of the Government Code.

We note 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 of the Government Code.¹ See Gov't Code §§ 552.117(a)(1), .024. 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). The city may only withhold information under section 552.117(a)(1) on behalf of a former or current official or employee who has made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Therefore, if the employee whose personal information we have marked timely elected to keep her information confidential under section 552.024, the city must generally withhold this information pursuant to section 552.117(a)(1). However, we note the requestor may be the authorized representative of this employee. If the requestor is this employee's authorized representative, then the city may not withhold the information pertaining to this employee from the requestor under section 552.117(a)(1) of the Government Code. See Gov't Code § 552.023(a). Also, if the employee at issue did not make a timely election for confidentiality, such information may not be withheld under section 552.117(a)(1).

We note that a portion of the submitted information is protected by copyright. A custodian of public records must comply with federal copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. See Open Records Decision No. 550 (1990).

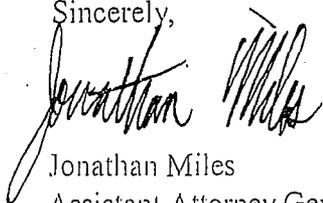
In summary, the city must withhold Exhibit D under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The city must withhold Exhibit C pursuant to section 552.101 in conjunction with section 411.192 of the Government Code. The city may withhold the examination we have marked under section 552.122 of the Government Code. If the employee whose personal information we have marked timely elected to keep her information confidential under section 552.024 and if the requestor is not the employee's authorized representative, the city must withhold this information under section 552.117(a)(1). The remaining information must be released, but any information subject to copyright may only be released in accordance with federal copyright law.

¹The 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).

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 360837

Enc. Submitted documents

c: Requestor
(w/o enclosures)