



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 24, 2009

Ms. Robin King
Custodian of Records
Kaufman County Sheriff's Office
P.O. Drawer 849
Kaufman, Texas 75142

OR2009-16733

Dear Ms. King:

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# 362331.

The Kaufman County Sheriff's Office (the "sheriff") received a request for information pertaining to the hiring process of the requestor. You claim the submitted information is not subject to the Act. Alternatively, you claim that 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 information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address your assertion that the submitted employment application is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) 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." *Id.* § 552.022(a). In support of your assertion you raise Open Records Decision 455 (1987), which you state concludes that "the Open Records does not apply to applications for employment." However, Open Records Decision 455 pertained to the application of privacy rules to certain governmental employees' personal information and did not address nor conclude whether employment

applications were subject to the Act. *Id.* Further, in this instance, the application at issue was collected and maintained by the sheriff in connection with the transaction of official business. Accordingly, the submitted information constitutes "public information" as defined by section 552.002(a) of the Government Code and is subject to the Act.

We next address your argument that the submitted information is confidential based on an agreement between the sheriff and the requestor. We note that information is not confidential under the Act simply because the party that submits the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) ("[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract."), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110). Consequently, unless the information at issue falls within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

Section 552.122 of the Government Code exempts 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. 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 seek to withhold the submitted information, which consists of an entire employment application, under section 552.122(b) of the Government Code. Most of the submitted application is factual background information that pertains to the applicant at issue. Upon review, we find that you have failed to demonstrate how any of this background information constitutes test items under section 552.122(b). We note the remainder of the submitted application contains interview questions. However, these questions only evaluate an applicant's individual abilities, personal opinions, and subjective ability to respond to particular situations, and do not test any specific knowledge of an applicant. *Id.* at 6. Thus, we conclude no portion of this information qualifies as test items under section 552.122(b). Accordingly, you may not withhold any of the submitted information under section 552.122

of the Government Code. As you claim no further exceptions to disclosure, the submitted information must be released to the requestor in its entirety.¹

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,



James McGuire
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 362331

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note the information being released contains information that would be excepted from disclosure to the general public under laws and exceptions designed to protect privacy. However, as the individual to whom the information pertains, the requestor has a special right of access to this information. See Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or that person's representative, solely on grounds that information is considered confidential by privacy principles). If the sheriff receives another request for this information from a person who would not have a special right of access, the sheriff should resubmit this same information and request another decision. See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).