



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2014

Mr. Darin Darby
Counsel for San Antonio Independent School District
Escamilla & Poneck, LLP
700 North Saint Mary's Street, Suite 850
San Antonio, Texas 78205

OR2014-19862

Dear Mr. Darby:

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# 541755.

The San Antonio Independent School District (the "district"), which you represent, received two requests from different requestors for information pertaining to two specified examinations of the district's police department (the "department") and certain information about the applicants. The second requestor also seeks a copy of the requirements for the promotion of any officer to a sergeant position within the district. You state you released some information to the second requestor. You claim the submitted 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.

Initially, we note the first requestor has asked the district to answer certain questions in writing. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the district has made a good faith effort to do so.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by

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other statutes, such as section 143.089 of the Local Government Code. The application of chapter 143 of the Local Government Code is delineated in section 143.002 of that code, which provides:

(a) This chapter applies only to a municipality:

(1) that:

(A) has a population of 10,000 or more;

(B) has a paid fire department or police department; and

(C) has voted to adopt this chapter or the law codified by this chapter; or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

Loc. Gov't Code § 143.002(a). Thus, chapter 143 of the Local Government Code applies only to civil service municipalities that have voted to adopt the chapter. We note the district is not a municipality. Furthermore, you have not explained how section 143.089 of the Local Government Code is applicable to information held by the district. Accordingly, the district may not withhold the information in Exhibit C under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

Section 552.122(b) 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 state the examinations in Exhibit B are used by the department to evaluate its officers' knowledge of the particular subject matters. We understand the examinations are used to help determine candidates' suitability for promotion to the position of sergeant. Having considered your representation and reviewed the information at issue, we find most of the submitted questions qualify as test items under section 552.122(b) of the Government Code. We also find the release of the answers to these questions would tend to reveal the questions

themselves. However, we conclude the district has not established one of the questions tests an individual's or group's knowledge or ability in a particular area. Accordingly, this information does not constitute a test item, and the question and its answer, which we have marked for release, may not be withheld under section 552.122(b). We further find the submitted lists of candidate scores, which we have also marked for release, do not reveal the substance of test items for purposes of section 552.122. Therefore, except for the information we have marked for release, the district may withhold the information in Exhibit B under section 552.122(b) of the Government Code.

In summary, except for the information we have marked for release, the district may withhold the information in Exhibit B under section 552.122(b) of the Government Code. The district must release Exhibit C and the information we have marked for release in Exhibit B.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 541755

Enc. Submitted documents

c: Requestor
(w/o enclosures)