



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 3, 2015

Ms. Maria Gonzalez
City Secretary
City of Missouri City
1522 Texas Parkway
Missouri City, Texas 77489

OR2015-25300

Dear Ms. Gonzalez:

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# 589075.

The City of Missouri City (the "city") received a request for information pertaining to the person selected for a specified open position of employment. You state you have released some information. You claim 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 submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, the requestor asserts the requested information has previously been made available to the requestor and the public. The Act does not permit the selective disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). The requestor states the city previously

released to him, and published on the city's website, the employment application questions for the position at issue. The requestor has sent copies of such information to this office. However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information the requestor obtained from the city or states was posted on the city's website. We note the information submitted by the city, which consists of interview questions, is not the exact same information the requestor obtained from the city or states was posted on the city's website. Further, the city does not indicate the information it submitted has been previously released to the public. Whether the information at issue was previously released is a question of fact this office cannot resolve in the open records ruling process. Thus, we must rely upon the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernable from the documents submitted for our inspection. *See* Open Records Decision Nos. 554 (1990), 552 (1990). Accordingly, we find section 552.007 is inapplicable to the submitted information and we will address the city's argument.

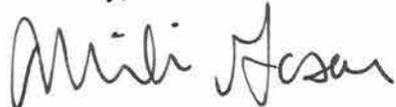
Section 552.122 of the Government Code excepts from public disclosure "[a] test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined the term "test item" in section 552.122 includes "any standard means by which an individual's 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. 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).

You seek to withhold the submitted information under section 552.122 of the Government Code. You state the submitted information contain interview questions and answers that test the knowledge and abilities of applicants in a particular area. Further, you argue release of the submitted information could compromise the effectiveness of the city's interview and hiring process. Based our review, however, we find the submitted information does not evaluate an individual's or group's knowledge or ability in a particular area. Rather, the information at issue reveals questions that evaluate an applicant's individual abilities, personal opinions, and subjective ability to respond to a particular situation. Accordingly, the city may not withhold the submitted information under section 552.122 of the Government Code. As no other exceptions to disclosure have been raised, the submitted information must be released.

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,

A handwritten signature in black ink that reads "Mili Gosar". The signature is written in a cursive, flowing style.

Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 589075

Enc. Submitted documents

c: Requestor
(w/o enclosures)