



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 26, 2016

Mr. James McKechnie  
Assistant City Attorney II  
Office of the City Attorney  
City of Wichita Falls  
P.O. Box 1431  
Wichita Falls, Texas 76307

OR2016-09369

Dear Mr. McKechnie:

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# 607430.

The City of Wichita Falls (the "city") received a request for information pertaining to the hiring process of the city's fire department for the 2015 year, including information regarding the Civil Service Entry Exam, the interview process, the names and rank of members of the interviewing committee, and the current eligibility hiring list.<sup>1</sup> You state the city 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.

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

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<sup>1</sup>You state the city sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

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 contend the submitted interview questions are excepted from disclosure under section 552.122(b) of the Government Code. You state release of this information could compromise future interviews by giving future applicants an unfair advantage. Upon review, we find the questions evaluate an applicant’s individual abilities, personal opinions, and subjective ability to respond to a particular situation, and does not test the specific knowledge of an applicant. Accordingly, the submitted questions do not consist of test items under section 552.122(b), and the city may not withhold them on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). We note the protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See* Gov’t Code § 552.117(a)(1) (providing that employees of governmental entities may protect certain personal information in the hands of their employer); Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information or not later than the 14th day after the date on which the employee began employment with the city. *See* Gov’t Code § 552.024(b). Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Upon review, we conclude that, to the extent the applicants at issue were ultimately hired and timely requested confidentiality under section 552.024 of the Government Code, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code. Conversely, to the extent the applicants were not ultimately hired or if the individuals at issue did not timely request confidentiality under section 552.024, the city may not withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining 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](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 "Britni Ramirez". The signature is written in a cursive, flowing style.

Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 607430

Enc. Submitted documents

c: Requestor  
(w/o enclosures)