



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 16, 2016

Ms. Elaine Nicholson
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2016-11141

Dear Ms. Nicholson:

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# 610192 (Ref. Nos. 24823, 25141, 25142).

The City of Austin (the "city") received multiple requests from the same requestor for the hiring process and priority hire lists with the ethnicities, first and last names, ranks, candidate identification numbers, written exam scores, and oral board scores for a specified cadet class of the city's fire department (the "department").¹ A second requestor requested his written exam score and oral board score. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.² We

¹We note the first requestor modified one of his requests. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing 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).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records

have also received and considered comments submitted by the United States Department of Justice (the "DOJ"). See Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note the first requestor seeks only the ethnicities, first and last names, ranks, candidate identification numbers, written exam scores, and oral board scores for the specified department cadet class, and the second requestor seeks only his written exam and oral board scores. Thus, the portions of the submitted documents that do not consist of this requested information are not responsive. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You have submitted a copy of a court order signed on November 7, 2014, by a judge in the United States District Court for the Western District of Texas, Austin Division, in the case styled *United States of America v. the City of Austin*, Civil Action No. 1:14-cv-00533-LY. The court order provides, in pertinent part, "all correspondence and communications between and among the [city and the DOJ] and their test developers, consultants, and/or experts in connection with performance of the obligations set forth in [this order] shall be held confidential and shall not be disclosed to any third party in the absence of a Court order compelling such disclosure, or the written consent of the adverse party, or as otherwise required by law." You explain the city obtained the submitted responsive information from the test developer. The DOJ states it does not consent to the disclosure of the information at issue. Upon review of the information at issue, we agree a court by order has prohibited disclosure of the information at issue. Accordingly, the city must withhold the submitted responsive information under section 552.107(2) of the Government Code.

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

to the extent that those records contain substantially different types of information than that submitted to this office.

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, appearing to read 'MLC', with a long horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 610192

Enc. Submitted documents

c: Requestor
(w/o enclosures)