



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 19, 2015

Mr. Charles R. Anderson  
City Attorney  
City of Irving  
825 West Irving Boulevard  
Irving, Texas 75060

OR2015-17279

Dear Mr. Anderson:

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# 576081.

The City of Irving (the "city") received a request for 1) the minutes and specified documents from meetings by the Arts Board and its committees during a specified period of time, 2) specified interview questionnaires used for the executive director search between a specified period of time, 3) notes taken and documents created by a named individual and members of the Arts Board and its committees regarding interviews with candidates for the executive director position, and 4) evaluations of applicants for the executive director position. You state you have released some information. You state the submitted information is excepted under sections 552.104 and 552.122 of the Government Code. We have considered the exceptions you raised and reviewed the submitted representative sample of information.<sup>1</sup>

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

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<sup>1</sup>We assume 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 to the extent those records contain substantially different types of information than that submitted to this office.

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 Exhibit B under section 552.122 of the Government Code. You state Exhibit B contains interview questions asked to applicants, the answers they provided, and notes by various committee members appointed to hire an executive director. Further, you argue release of the information you marked could compromise future interviews and the hiring process. Upon review, however, we find the submitted questions do 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 any portion of the submitted information under section 552.122 of the Government Code.

You seek to withhold an offer letter in Exhibit C under section 552.104 of the Government Code. Section 552.104(a) excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104(a). The “test under section 552.104 is whether knowing another bidder’s [or competitor’s information] would be an advantage, not whether it would be a decisive advantage.” *Boeing Co. v. Paxton*, No. 12-1007, 2015 WL 3854264, at \*9 (Tex. June 19, 2015). You claim the submitted information in Exhibit C relates to a competitive situation because it concerns an ongoing hiring process and release of this information will jeopardize the hiring method. However, this office has consistently interpreted section 552.104 to apply in competitive bidding and procurement situations. *See, e.g.*, Open Records Decision Nos. 604 at 1 (1992), 593 at 1 (1991) (statutory predecessor to section 552.104 “designed to protect interests in commercial transactions”), 592 at 5 (1991), 568 at 2 (1990), 541 at 3 (1990), 514 at 1 (1988) (statutory predecessor to section 552.104 protects purchasing interests), 463 at 1-2 (1987) (statutory predecessor to section 552.104 “has been construed to protect the sealed bid process”), 231 (1979) (statutory predecessor not applicable to feasibility study where no actual bidding process was under way). In light of this office’s prior interpretations of section 552.104, we are not persuaded that a competition among applicants for a position of public employment is a competitive situation contemplated by section 552.104. *Cf.* ORD 463 at 2 (stating, by analogy, that “competition” between two job applicants seeking one job offered by the state is not a process the statutory predecessor to section 552.104 was intended to protect). We find the city has failed to demonstrate the applicability of section 552.104 of the Government Code in this instance, and no information may be withheld on that basis. As you raise no other exceptions to disclosure, 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](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 cursive script that reads "Katelyn Blackburn-Rader". The signature is written in black ink and is positioned above the typed name.

Katelyn Blackburn-Rader  
Assistant Attorney General  
Open Records Division

KB-R/akg

Ref: ID# 576081

Enc. Submitted documents

c: Requestor  
(w/o enclosures)