



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 18, 2017

Ms. Nneka E. Kanu
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2017-01203

Dear Ms. Kanu:

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# 641870 (GC No. 23840).

The City of Houston (the "city") received a request for the notes written by the four committee members who conducted interviews for a specified job position. The city claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception the city claims and reviewed the submitted information.

Initially, we note the requestor only seeks the notes written by the specified committee members. We note the submitted information contains information beyond this information. Accordingly, the submitted information that does not consist of the notes written by the specified committee members is not responsive to the instant request. This ruling does not address the public availability of non-responsive information, and the city is not required to release such information in response to this request.

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).

The city seeks to withhold the responsive information under section 552.122 of the Government Code. The city indicates release of the responsive information would reveal questions that constitute test items for purposes of section 552.122(a). The city states the questions at issue test the knowledge, skills, and abilities of an applicant in a particular area. The city states it uses these questions on a continuing basis during its hiring process. Additionally, the city states releasing these questions would compromise the effectiveness of the city’s interview and hiring process. Based on these representations and our review, we agree some of the responsive information reveals questions that qualify as test items under section 552.122(b) of the Government Code. Accordingly, the city may withhold the responsive information we have marked pursuant to section 552.122(b) of the Government Code. We find, however, the remaining responsive information pertains to questions that only evaluate an applicant’s general workplace skills, subjective ability to respond to particular situations, and overall suitability for employment, and do not test any specific knowledge of an applicant. Accordingly, we determine the remaining responsive information does not reveal test items subject to section 552.122(b) of the Government Code and may not be withheld 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.¹ *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 id.* § 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)

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

In summary, the city may withhold the responsive information we have marked pursuant to section 552.122(b) of the Government Code. 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. The remaining responsive 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 641870

Enc. Submitted documents

c: Requestor
(w/o enclosures)