



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 23, 2017

Jhoslyn Y. Hood  
Assistant City Attorney  
City of Fort Worth  
200 Texas Street, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102-6311

OR2017-11267

Dear Ms. Hood:

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# 658899 (Public Information Request No. W059876).

The City of Fort Worth (the "city") received a request for all information regarding interviews held for a specified position during a specified time period. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find you have failed to demonstrate any portion of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

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). 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 seek to withhold the some of the submitted interview questions, model answers, and interviewee responses under section 552.122 of the Government Code. You state release of the test questions and answers “would be disadvantageous to the selection process.” You argue the release of the questions could compromise future interviews. Based on your representations and our review, we conclude the marked questions and answers qualify as a “test item” under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, the city may withhold the questions and answers you marked under section 552.122(b) of the Government Code.

In summary, the city must withhold the information you marked under section 552.122 of the Government Code. The city must release the remaining information.

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,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/tdw

Ref: ID# 658899

Enc. Submitted documents

c: Requestor  
(w/o enclosures)