



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 26, 2018

Mr. Rahat Huq
Assistant City Attorney
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2018-04395

Dear Mr. Huq:

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# 703532 (Ref. No. 25003).

The City of Houston (the "city") received a request for the requestor's psychological evaluation and employment application. You state you will make some information available to the requestor. 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 "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses section 611.002 of the Health and Safety Code, which provides in part as follows:

- (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.
- (b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining “patient” and “professional”). Upon review, we find most of Exhibit 2 consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Therefore, with the exception of the information we have marked for release, the city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. However, we find the information we have marked for release does not constitute mental health records subject to chapter 611 of the Health and Safety Code, and the city may not withhold the information have marked for release under section 552.101 of the Government Code on that basis.

Section 552.122(a) of the Government Code excepts from disclosure “[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]” Gov’t Code § 552.122(a). 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.” ORD 626 at 6. The question of whether specific information falls within the scope of section 552.122(a) must be determined on a case-by-case basis. *Id.* at 7. Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *See* Open Records Decision No. 118 (1976). *See generally* ORD 626 at 4-5. 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).

You seek to withhold Exhibit 3 under section 552.122 of the Government Code. You state the information at issue determines the suitability of an individual’s employment with the city. You also state release of Exhibit 3 would compromise future interviews. Based on your representations and our review, we find Exhibit 3 consists of “test items” under section 552.122(a) of the Government Code. Furthermore, we find release of the answers to the questions would reveal the questions themselves. Therefore, the city may withhold Exhibit 3 under section 552.122(a) of the Government Code.

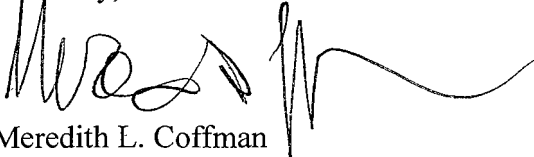
In summary, with the exception of the information we have marked for release, the city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code. The city may withhold Exhibit 3 under section 552.122(a) of the Government Code.

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 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 'Meredith L. Coffman', with a long, sweeping horizontal flourish extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 703532

Enc. Submitted documents

c: Requestor
(w/o enclosures)