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ATTORNEY GENERAL OF TEXAS

May 6, 2019

Mr. Ron G. MacFarlane, Jr.
Counsel for the City of Cedar Hill
The MacFarlane Law Firm P.C.
400 East Royal Lane, Suite 290
Irving, Texas 75039

OR2019-12076

Dear Mr. MacFarlane:

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# 763861.

The City of Cedar Hill (the "city"), which you represent, received a request for information pertaining to a named employee. The city represents it will withhold information it has marked under sections 552.130(c) of the Government Code and Open Records Decision No. 684 (2009).¹ The city states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.117 and 552.122 of the Government Code. We have considered the claimed exceptions 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."² Gov't

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

Code § 552.101. This section encompasses information protected by other statutes. The information at issue contains L-2 (Declaration of Medical Condition) and L-3 (Declaration of Psychological and Emotional Health) forms, which are required by the Texas Commission on Law Enforcement (the “commission”).³ Section 1701.306 of the Occupations Code provides in relevant part as follows:

(a) The commission may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). The city must withhold these forms, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.⁴

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The city must withhold the submitted date of birth under section 552.102(a) of the Government Code.⁵

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family

³The Texas Commission on Law Enforcement Officer Standards and Education was renamed the Texas Commission on Law Enforcement by the 83rd Legislature. See Act of May 6, 2013, 83rd Leg., R.S., ch. 93, § 1.01, 2013 Tex. Gen. Laws 174, 174.

⁴As our ruling is dispositive, we do not address the arguments of the city to withhold this information.

⁵As our ruling is dispositive, we do not address the arguments of the city to withhold this information.

member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The submitted information includes an election by the named employee to withhold certain personal information. Therefore, the city must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code pertaining to the named employee. However, the employee at issue did not elect to withhold any of the remaining information under section 552.117(a)(1). Accordingly, the city may not withhold any of it on that ground.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.⁶ Gov't Code § 552.117(a)(2). It is unclear whether the employee at issue is currently a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12. If the employee is not a currently licensed peace officer as defined by article 2.12, then the city may not withhold this information under section 552.117(a)(2).

Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. *Id.* § 552.122(b). 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. Open Records Decision No. 626 at 9 (1994). Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *See id.* at 6. 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.

Upon review, we conclude the submitted questions consist of test items under section 552.122(b). We also find release of the responses to these questions would tend to reveal the questions themselves. Therefore, the city may withhold these questions and responses, which we have marked, under section 552.122(b). However, section 552.122(b) is not applicable to any of the remaining information, and the city may not withhold any of it on that ground.


⁶"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

In summary, the city must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code; (2) the submitted date of birth under section 552.102(a) of the Government Code; (3) the information we have marked under section 552.117(a)(1) of the Government Code; and (4) the information we have marked under section 552.117(a)(2) of the Government Code if the employee at issue is a currently licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure. The city may withhold the information we have marked under section 552.122(b) 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, 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/gw

Ref: ID# 763861

Enc. Submitted documents

c: Requestor
(w/o enclosures)