



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2019

Mr. James Kopp
Assistant City Attorney
City of San Antonio
P O Box 839966
San Antonio, Texas 78207

OR2019-16143

Dear Mr. Kopp:

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# 770560 (COSA File Nos. W257707, W258503, W259411, and W259188).

The City of San Antonio (the "city") received four requests from different requestors for information pertaining to specified promotional examinations. You claim the requested 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.

Initially, you state portions of the requested information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-12478 (2019). In that ruling, we concluded the city must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.032 of the Local Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the city must continue to rely on Open Records Letter No. 2019-12478 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same

governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 143.032 of the Local Government Code. Section 143.032 provides, in relevant part,

(a) The [Fire Fighters' and Police Officers' Civil Service Commission] shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the fire and police departments. Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the examinations shall be held substantially as prescribed by this section.

(b)(1) Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates[.]

...

(c) The examination must be entirely in writing and may not in any part consist of an oral interview.

...

(h) A person commits an offense if the person knowingly or intentionally:

(1) reveals a part of a promotional examination to an unauthorized person; or

(2) receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage.

Local Gov't Code § 143.032(a), (b)(1), (c), (h). Thus, the clear language of section 143.032 makes the city's promotional examination confidential and permits its disclosure only to an authorized person. *Cf.* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101). Generally, a promotional examination under chapter 143 must be entirely in writing and may not in any part consist of an oral interview. *See* Local Gov't Code § 143.032(c). We understand the requestors are not authorized persons who may receive the examination questions and answers. Therefore, we find the written portions of the promotional examinations at issue are confidential under section 143.032(h) of the Local

Government Code and must be withheld under section 552.101 of the Government Code.¹ However, we note the remaining information consists of video recordings of oral examinations. Because these examinations consist of oral examinations that are not in writing, we find section 143.032 is generally inapplicable to the remaining information.

Section 174.006 of the Local Government Code permits the city and a labor association to agree to alter the terms of state civil service provisions in a collective bargaining contract (“CBC”). *See id.* § 174.006(a) (state or local civil service provision prevails over CBC under chapter 174 of Local Government Code unless CBC specifically provides otherwise). You state, and submit documentation demonstrating, the city and the San Antonio Police Officer’s Association adopted a Collective Bargaining Agreement (“CBA”) in which Article 11 modified the procedures for promotional testing to include video assessments. *See CBA*. Thus, you assert that although section 143.032(c) refers to a written examination, through legal amendment of the testing process by the CBA, the confidentiality provision of section 143.032(h) now includes the entirety of the examination process, including the video assessment. Further, the CBA provides, “It is expressly understood and agreed that all provisions of this [a]rticle shall preempt any statute, [e]xecutive order, local ordinance, [c]ity policy Civil Service Commission rule or other [c]ity or rule, which is in conflict with or is inconsistent with this [CBA] and the procedures developed thereunder, including for example and not by way of limitation any contrary provisions in [s]ection . . . 143.032[.]” *Id.* § 9. Upon review, we find the CBA supersedes section 143.032(c) of the Local Government Code. Accordingly, we find the submitted video recordings of oral examinations are part of promotional examinations that are confidential pursuant to section 143.032 of the Local Government Code. Therefore, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.032 of the Local Government Code.²

In summary, the city must continue to rely on Open Records Letter No. 2019-12478 as a previous determination and withhold the identical information in accordance with that ruling. The city must withhold the written portions of the promotional examinations under section 552.101 of the Government Code in section 143.032(h) of the Local Government Code. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 143.032 of the Local Government Code.

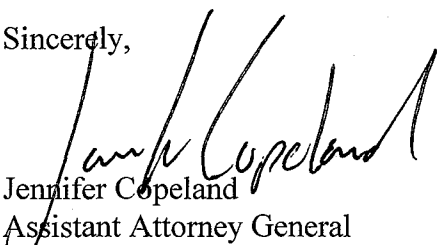
¹As our ruling on this information is dispositive, we need not address your remaining argument against disclosure of this information.

²As our ruling on this information is dispositive, we need not address your remaining argument against disclosure of this 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/be

Ref: ID# 770560

Enc. Submitted documents

c: 4 Requesters
(w/o enclosures)