



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 19, 2019

Mr. Austin R. Beck  
Counsel for the City of Cibolo  
Davidson, Troilo, Ream & Garza  
601 Northwest Loop 410, Suite 100  
San Antonio, Texas 78216-5511

OR2019-32632

Dear Mr. Beck:

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# 797290.

The City of Cibolo (the "city"), which you represent, received a request for all information pertaining to the requestor's application for employment with the city. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.122(b) of the Government Code excepts from 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." 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.* 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 the submitted information under section 552.122 of the Government Code. You assert the submitted questions test the knowledge and abilities of applicants in a particular area. You also inform us you use the questions at issue on a continuing basis. Based on these representations and our review, we find most of the submitted questions are “test items” under section 552.122(b) of the Government Code. Furthermore, we find release of the answers to the questions at issue would reveal the questions themselves. Therefore, except for the information we have marked for release, the city may withhold the submitted information under section 552.122(b) of the Government Code. However, we find the information we have marked for release only evaluates an applicant’s general workplace skill, subjective ability to respond to particular situations, and overall suitability for employment, and does not test any specific knowledge of the applicant. Thus, we determine the information we have marked for release does not consist of test items under section 552.122(b) of the Government Code. Therefore, the city may not withhold the information we have marked for release under section 552.122 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1). This section is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 at 3-4 (1989) (detailed guidelines regarding police department’s use of force policy), 508 at 3-4 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution). However, section 552.108(b)(1) is not applicable to generally known policies and procedures. *See* Open Records Decision Nos. 531 at 2-3 (former section 552.108 does not protect Penal Code provisions, common-law rules, and constitutional limitations on use of force), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques submitted were any different from those commonly known with law enforcement and crime prevention). The determination of whether the release of particular records would interfere with law enforcement is made on a case-by-case basis. Open Records Decision No. 409 at 2 (1984). Upon review, we conclude you have failed to establish section 552.108(b)(1) is applicable to any of the remaining information. Therefore, the city may not withhold any portion of the remaining information under section 552.108(b)(1) of the Government Code.

In summary, except for the information we have marked for release, the city may withhold the submitted information 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/jxd

Ref: ID# 797290

Enc. Submitted documents

c: Requestor  
(w/o enclosures)