



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 20, 2019

Mr. Neal Falgoust
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767

OR2019-36325

Dear Mr. Falgoust:

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# 804044 (ORR# X004417).

The City of Austin (the "city") received a request for information related to the 2017 fire department captain assessments. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.122 of the Government Code. We have considered the exception the city claims and reviewed the submitted representative sample of information.¹

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,

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

(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 requestor is not an authorized person who may receive the examination questions and answers. However, the information at issue consists of a video recording of an oral examination. Because the examination consists of an oral examination that is not in writing, we find section 143.032 is generally inapplicable to the information.

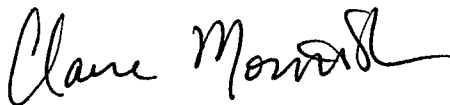
Section 174.006 of the Local Government Code permits the city and a labor association to agree to alter the terms of state civil service provisions in a collective bargaining contract ("CBC"). *See id.* § 174.006(a) (state or local civil service provision prevails over CBC under chapter 174 of Local Government Code unless CBC specifically provides otherwise). The city states, and submits documentation demonstrating, the city and the Austin Firefighter's Association (the "association") adopted a Collective Bargaining Agreement ("CBA") in which Article 16 modified the procedures for promotional testing to include video assessments. *See* CBA. Thus, the city asserts 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, "The [c]ity and the [a]ssociation agree that promotional Assessment Centers conducted in accordance with this Article, including any video recording of the assessments, are a scored component part of a Promotional Examination, used in like manner as the scored written examination, and are therefore confidential pursuant to [Local Government Code] Section 143.032(h)." *Id.* § 4(A)(6). Upon review, we find the CBA supersedes section 143.032(c) of the Local Government Code. Accordingly, we find the submitted video recording of an oral examination is part of a promotional examination that is confidential pursuant to section 143.032 of the Local Government Code. Therefore, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.032 of the Local Government Code.²

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/gw

Ref: ID# 804044

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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