



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2020

Mr. Thomas Bailey
Legal Services
VIA Metropolitan Transit
123 North Medina Street
San Antonio, Texas 78207

OR2020-08525

Dear Mr. Bailey:

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# 818489.

VIA Metropolitan Transit ("VIA") received a request for information pertaining to a specified job posting. VIA states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. Gov't Code § 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 some of the submitted questions consist of test items under section 552.122(b). We also find release of the preferred answers and responses to these questions would tend to reveal the questions themselves. Therefore, VIA may withhold these questions and their preferred answers and responses, which we have marked, under section 552.122(b). However, we conclude VIA has not established the remaining questions test an individual's or group's knowledge or ability in a particular area. *See* ORD 626 at 9. Therefore, VIA may not withhold the remaining questions.

Section 552.117(a)(1) of the Government Code may be applicable to some of the remaining information.¹ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family 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 a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. The information at issue pertains to an applicant for an employment position. Therefore, VIA must withhold the information we have marked under section 552.117(a)(1) if it pertains to an applicant who was ultimately hired by VIA and who timely requested confidentiality under section 552.024. If the applicant either was not ultimately hired by VIA or did not timely request confidentiality under section 552.024, then VIA may not withhold this information under section 552.117(a)(1).

In summary, VIA may withhold the information we have marked under section 552.122(b) of the Government Code. VIA must withhold the information we have marked under section 552.117(a)(1) of the Government Code if it pertains to an applicant who was ultimately hired by VIA and who timely requested confidentiality under section 552.024 of the Government Code. VIA 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

¹The 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).

Mr. Thomas Bailey - Page 3

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/mo

Ref: ID# 818489

Enc. Submitted documents

c: Requestor
(w/o enclosures)