



September 8, 1999

Mr. C. Robert Heath
Bickerstaff, Heath, Smiley, Pollan, Keever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR99-2495

Dear Mr. Heath:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127104.

The Austin Independent School District received requests for information pertaining to candidates for superintendent. You seek to withhold the requested information under sections 552.122 and 552.126 of the Act. You also contend that some of the information responsive to the requests constitutes “personal notes” of school board members and not public information subject to chapter 552. You have submitted representative samples of the information at issue.¹

Section 552.122(b) excepts from disclosure “a test item developed by a licensing agency or governmental body.” In Open Records Decision No. 626 (1994), this office determined that 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

¹In reaching our conclusion, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 (1994). 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).

Having reviewed the information for which you claim the protection of section 552.122(b), we do not believe that any of the information constitutes "test items" within the meaning of that provision. None of the information may be withheld under that section.

Section 552.126 excepts from disclosure the "name of an applicant for the position of superintendent of a public school district . . . except that the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days" before a vote or final action is taken. You indicate that the board has already given public notice of the identity of certain finalists for school district superintendent. None of the information pertaining to individuals who have been named finalists may be withheld under section 552.126. In our opinion, much of the rest of the information for which you claim the protection of section 552.126 identifies or tends to identify individual applicants. Such information may be withheld under section 552.126. *See* Open Records Decision No. 540 (1990) (interpreting section 552.123 -- which, in similar language to section 552.126, protects identities of applicants for chief executive officer of institution of higher education -- as applying to identities, rather than just names of applicants). We have marked a portion of the information which may be withheld in its entirety under section 552.126, so long as it does not pertain to finalists for the superintendent's position. In the portions of the information you have labeled as "personal notes" and "test Q," we have marked the kind of identifying information which may be withheld under section 552.126 so long as it does not pertain to finalists. Again, none of the information pertaining to finalists for the superintendent position may be withheld under section 552.126.

You assert that records responsive to the portion of the request seeking "notes" regarding the superintendent candidates are not subject to chapter 552 of the Government Code. You contend that the notes at issue were made by some of the board members and are "essentially memory-jogging devices that were made for the sole use of the individual who took the notes."

Information is subject to chapter 552 if it is collected, assembled, or maintained under a law, ordinance, or in connection with the transaction of official business (1) by a governmental body or (2) for a governmental body and the governmental body owns the information or has a right of access to it. *See* Gov't Code § 552.021(a). We have examined the information you claim consists of "personal notes" not subject to chapter 552. In our opinion, the notes at issue were "created" in connection with the transaction of official business and are thus subject to the provisions of chapter 552. *See*, Open Records Decision No. 626 (1994), Open

Records Decision No. 327 (1982). Except as noted above in our discussion of section 552.126, you must release the information at issue.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 127104

Encl. Submitted documents

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