OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

June 11, 2002

Ms. Kelli Karczewski
Schwartz & Eichelbaum, PC
P.O. Box 3685
San Angelo, Texas 76902

OR2002-3142

Dear Ms. Karczewski:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164176.

The San Angelo Independent School District (the "district"), which your firm represents, received a request for "all background information on the six finalists for the position of Superintendent for the [district]." You claim that the requested information is excepted from disclosure under section 552.126 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

Section 552.126 of the Government Code excepts from required public disclosure "[t]he name of an applicant for the position of superintendent of a public school district[.]" Gov't Code § 552.126. Section 552.126 provides, however, 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 the date of a meeting at which a final action or vote is to be taken on the employment of the person." *Id.* You inform this office that "[w]hile no true 'finalist' has been named by the [district] board of trustees, six individuals were interviewed by the [district] board of trustees the weekend of March 15, 2002."[2] You contend that the submitted

[1]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 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 that those records contain substantially different types of information than that submitted to this office.

[2]We assume that the Board of Trustees gave or will give the required 21 days' notice of the meeting at which the final action or vote was or will be taken to employ the new superintendent.

documents, consisting of a representative sample of the applicants' applications for the position of superintendent, are excepted from disclosure under section 552.126. Based on your representations and our review of the information at issue, we agree that the district may withhold the submitted information from the requestor under section 552.126. *Cf.* Open Records Decision No. 540 (1990) (concluding that statutory predecessor to section 552.123 protected information that would identify applicants for university president's position).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

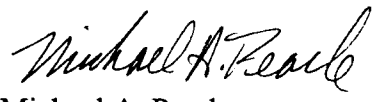
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 164176

Enc. Submitted documents

c: Mr. Daniel Cardenas
Ms. Elma Jaques
1417 South Irving
San Angelo, Texas 76903
(w/o enclosures)