



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 6, 2002

Ms. Lisa R. McBride  
Bracewell & Paterson, L.L.P.  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR2002-6946

Dear Ms. McBride:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172513.

The Houston Community College System (the "system"), which you represent, received a request for eighteen categories of information regarding the system's search for and appointment of an interim and permanent Chancellor. You state that you will release portions of the requested information.<sup>1</sup> However, you claim that the highlighted portions of the submitted information are excepted from disclosure under sections 552.117, 552.123, and 552.126 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.123 of the Government Code excepts from required public disclosure:

The name of an applicant for the position of chief executive officer of an institution of higher education . . . except that the governing body of the institution 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 the meeting at which final action or vote is to be taken on the employment of the person.

Gov't Code § 552.123. Section 552.123 permits the withholding of any identifying information about candidates, not just their names. Open Records Decision No. 540 (1990)

---

<sup>1</sup>You state that you notified the interested third parties of the request and that they have no objections to the release of their information. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

(construing statutory predecessor to section 552.123). Examples of information identifying individuals might include, but is not limited to, resumes, professional qualifications, membership in professional organizations, dates of birth, current positions, publications, letters of recommendation, or any other information that can be uniquely associated with a particular applicant. *Id.* at 4. In addition, the exception protects the identities of all persons being considered for the position of university chief executive officer, whether they apply on their own initiative or they are nominated. *Id.* at 5.

The system is an “institution of higher education” as defined by section 61.003(8) of the Texas Education Code. Section 61.003(8) of the Education Code defines an institution of higher education as “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” Educ. Code § 61.003(8). You state that the position of Chancellor is the chief executive officer and that the system’s search for and appointment of an interim and permanent Chancellor is complete. Additionally, you inform us that the requested information as it relates to the finalist will be released to the extent the information is not confidential under section 552.117. Based on your representations and our review of the information, we conclude that you may withhold the highlighted identifying information of the applicants who were not finalists under section 552.123 of the Government Code. As we are able to make this determination, we need not address your argument under section 552.126 of the Government Code.

In regard to your section 552.117 argument, section 552.117 of the Government Code exempts from disclosure the home addresses, telephone numbers, 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 in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The system must withhold this type of information pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to the system’s receipt of the current records request. We have marked the information subject to section 552.117.

Finally, the submitted information contains an e-mail address of a member of the public that may be excepted from disclosure. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Accordingly, unless consent to release has been granted, you must withhold the e-mail address we have marked under section 552.137 of the Government Code.

In summary, we conclude that: 1) you may withhold the highlighted identifying information of the applicants who were not finalists under section 552.123 of the Government Code; 2) you must withhold the section 552.117 information only to the extent that the respective employee elected to keep this information confidential prior to the system's receipt of the current records request; and 3) unless consent to release has been granted, you must withhold the e-mail address we have marked under section 552.137 of the Government Code.

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,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 172513

Enc: Submitted documents

c: Mr. Jim Thompson, GySgt  
Chief Executive Officer  
African-American Leadership Defense Group  
P.O. Box 91212  
Houston, Texas 77291-1212  
(w/o enclosures)

Ms. Barbara H. Litchfield  
Principal  
Litchfield & Willis, Inc.  
3900 Essex Lane at Wesleyan, Suite 650  
Houston, Texas 77027-5111  
(w/o enclosures)

Ms. Barbara E. Taylor  
Managing Director  
Academic Search  
1717 K Street, NW, Suite 210  
Washington, D.C. 20036  
(w/o enclosures)

Ms. Teri Graham Pauly  
President  
Pauly Group Incorporated  
2925 S. Meadowbrook Road, Suite B  
Springfield, Illinois 62707  
(w/o enclosures)

Mr. Trigg C. Bracewell  
Principal  
Korn/Ferry International  
1100 Louisiana, Suite 2850  
Houston, Texas 77002  
(w/o enclosures)

Dr. Bob Barringer  
Gold Hill Associates  
65 Haywood Street  
Asheville, North Carolina 28801  
(w/o enclosures)