ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 28, 2005

Ms. Carolyn M. Hanahan
Feldman & Rogers, L.L.P.
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Houston, Texas 77057

OR2005-01716

Dear Ms. Hanahan:

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# 219331.

The Klein Independent School District (the "district"), which you represent, received a request for eighteen categories of information related to the district's search for a superintendent. You state that some responsive information has been released to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.102 and 552.126 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 district has already given public notice of the identity of a finalist for school district superintendent. None of the information pertaining to an individual who has been named a finalist may be withheld under section 552.126. However, the names of the remaining applicants for the position of superintendent are excepted from disclosure under section 552.126. Furthermore, this protection from disclosure extends not only to the names of the individuals, but also to any information tending to identify the individual. *See, e.g.,* Attorney General Opinion JM-36 (1983); Open Records Decision Nos. 477 (1987), 165 (1977) (relating to identities of students); 339 (1982) (victims of sexual abuse or rape); 515 (1988) (informers covered by informer's privilege). This office has previously held that the type of information that identifies individuals in such cases includes, 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. Open Records Decision No. 540 (1990). Thus, in this case, you may withhold the requested information pertaining to the applicants for the position of superintendent pursuant to section 552.126, so long as this information does not pertain to the finalist for the superintendent's position. *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).

You further claim that portions of the college transcript of the finalist are excepted under section 552.102(b), which excepts from public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." Gov't Code § 552.102(b). This section further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the finalist's transcript under section 552.102(b).

We note that some of the remaining submitted information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and 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 under 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 district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent that the officials or employees in question made a timely election under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1).

In summary, the district may withhold the requested information pertaining to the applicants for the position of superintendent pursuant to 552.126, so long as this information does not pertain to the finalist for the superintendent's position. With the exception of information that reveals the degree obtained and the courses taken, the district must withhold the finalist's transcript under section 552.102(b). To the extent that the officials or employees in question made timely elections under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). The remaining submitted information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. Dep't of Pub. 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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 219331

Enc. Submitted documents

c: Mr. Jim Thompson, GySgt
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(w/o enclosures)