ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2005

Ms. Merri Schneider-Vogel
Bracewell & Patterson, L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2005-03939

Dear Ms. Schneider-Vogel:

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# 223607.

The Houston Independent School District (the "district"), which you represent, received a request for information regarding the search, selection, and appointment of the current district superintendent. You state that you have released or will release most of the requested information. You claim, however, that the submitted information is excepted from disclosure under sections 552.101 and 552.126 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the district failed to comply with the requirements of section 552.301 of the Government Code. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Because

sections 552.101 and 552.126 of the Government Code can provide compelling reasons to withhold information, we will address your arguments under those exceptions.

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. Gov't Code § 552.126. You inform us that the district has given public notice of the identity of the sole finalist for district superintendent. None of the information pertaining to the individual who has been named the 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, to the extent that the information labeled as Exhibits B and C pertains to non-finalist applicants for the superintendent position, such information may be withheld under section 552.126 of the Government Code. *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).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Section 551.146 of Government Code makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See* Gov't Code § 551.146(a)-(b).

The district informs us that the information submitted as Exhibit D consists of certified agendas of closed session meetings held in accordance with section 551.074 of the Government Code to interview and discuss applicants for the superintendent position. Based on your representations, we agree that section 552.104(c) applies to Exhibit D. Accordingly,

we conclude that the district must withhold Exhibit D under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

In summary, to the extent that Exhibits B and C pertain to non-finalist applicants for the superintendent position, the district may withhold such information under section 552.126 of the Government Code. Exhibit D must be withheld under section 552.101 of the Government Code in conjunction with section 551.104(c) 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, 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,

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/jev

Ref: ID# 223607

Enc. Submitted documents

c: Mr. Jim Thompson
Chief Executive Officer
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(w/o enclosures)