



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 3, 2007

Mr. Juan Cruz  
Escamilla & Poneck, Inc.  
Counsel for San Marcos Consolidated Independent School District  
711 Navarro, Suite 100  
San Antonio, Texas 78205

OR2007-03698

Dear Mr. Cruz:

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# 274834.

The San Marcos Consolidated Independent School District (the "district"), which you represent, received requests for (1) the "names of the finalists for the [district] superintendent position," and (2) the "names, applications and resumes for the final five candidates interviewed by the [district] board for the superintendent's position." You claim that the submitted information is excepted from disclosure under section 552.126 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

As a preliminary matter, we note you have informed us that, on the date of the requests, the district board of trustees had "not taken action to name a finalist or finalists for the position of [superintendent]." We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984). However, a governmental body must make a good-faith effort to relate a request to information that it holds. See Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). The documents you have submitted for our review relate to the employment candidates you inform us were to be interviewed for the superintendent position. Based on our review, we find that the district has made a good-faith effort to relate the requests for information to the submitted document that the district maintains. Accordingly, we will address your arguments against disclosure of this information.

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.* As noted, you inform us that, on the date of the requests, no finalist for the superintendent position had been chosen. Thus, you assert, and we agree, that the names of the *employment candidates 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 individuals. *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). 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. *Id.* Thus, in this instance, the district may withhold the submitted information pursuant to section 552.126.

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

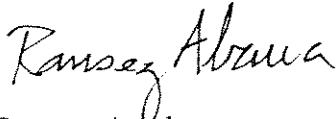
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Texas 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 Office of the Attorney General 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. 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/eb

Ref: ID# 274834

Enc. Submitted documents

c: Ms. Ashley Landis  
San Marcos Daily Record  
1910 IH 35, South  
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(w/o enclosures)

Ms. Molly Bloom  
Austin American-Stateman  
109 East Hopkins Street, Suite 203  
San Marcos, Texas 78666  
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