ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2007

Mr. Randolph W. Stout
Coffey, Stout & Peace, L.L.P.
513 West Oak Street
Denton, Texas 76201

OR2007-06623

Dear Mr. Stout:

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#279705.

The Pilot Point Independent School District (the "district"), which you represent, received a request for information concerning applicants for the position of superintendent of the school district.[1] You claim that some of 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.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't Code § 552.301(b). Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). Additionally, a governmental body must submit the following information within fifteen business days of

[1]As you have not submitted the request for information, we take our description from your brief.

receiving the written request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* You state that you received the request February 28, 2007. However, the district did not request a decision from this office or submit the information at issue until March 26, 2007. Additionally, the district has not submitted a copy of the written request for information. Accordingly, we conclude that the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). However, because section 552.126 can provide a compelling reason to withhold information, we will address your claim regarding this exception.

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.* Upon review, we agree that the names of the 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 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, the district may withhold the submitted information under section 552.126 of the Government Code.

The district requests a previous determination that names of the applicants for the position of superintendent are exempt from public disclosure under the Act. We decline to issue a previous determination at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; and 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,

Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/eeg

Ref: ID# 279705

Enc. Submitted documents

c: Mr. Dave Doughty
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(w/o enclosures)