



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 8, 2008

Ms. Renee Smith Byas
Vice Chancellor & General Counsel
North Harris Montgomery Community College District
5000 Research Forest Drive
The Woodlands, Texas 77381-4399

OR2008-00309

Dear Ms. Byas:

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# 299126.

The North Harris Montgomery Community College District (the "district") received a request for four categories of information related to a job vacancy at North Harris College (the "college"). You indicate that some of the requested information will be provided to the requestor. You claim that the submitted information is excepted from disclosure under section 552.123 of the Government Code. We have considered the exception 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." *See* Gov't Code § 552.123. The college is an institution of higher education. *See, e.g.,* Educ. Code §61.003. You state that the submitted information identifies the unsuccessful candidates for the college's presidency. Based on your representations and our review of the information, we conclude that the district may withhold the submitted information under section 552.123 of the Government Code. *See* Open Records Decision No. 540 (1990).

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 299126

Enc. Submitted documents

c: Ms. Jean Iverson
5526 Ashgate Drive
Spring, Texas 77373
(w/o enclosures)