



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 11, 2009

Mr. Sydney W. Falk
Bickerstaff Heath Delgado Acosta LLP
816 Congress Avenue, Suite 1700
Austin, Texas 78701

OR2009-12876

Dear Mr. Falk:

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# 354954.

The Austin Independent School District (the "district"), which you represent, received a request for correspondence between the district and a named individual over a specified period of time.¹ Although your brief does not reveal whether the district maintains the requested information, you claim that any information that would identify a person as an applicant for the position of district superintendent is excepted from disclosure under section 552.126 of the Government Code.² We have considered your arguments.

Section 552.126 of the Government Code 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 explain that the district named a sole finalist on February 26, 2009. Thus, you assert, and we agree, that the name of an employment candidate not selected as a finalist for the

¹Though the request also seeks correspondence between the district and a second named individual, you inform this office that you are not seeking a ruling on that portion of the request at this time.

²We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

position of superintendent is excepted from disclosure under section 552.126. Furthermore, this protection from disclosure extends not only to the name of the individual, but also to any information tending to identify the individual. *See* Open Records Decision No. 540 (1990) (interpreting section 552.123 – which, in language similar 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.* In this instance, the very existence of responsive information would confirm the named individual as a candidate and would reveal information made confidential under section 552.126 of the Government Code. Thus, to the extent the district maintains the requested correspondence and any associated information pertaining to an applicant as described above, the district may withhold such information pursuant to section 552.126 of the Government Code.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 354954

Enc. Submitted documents

c: Requestor
(w/o enclosures)