



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2009

Mr. Christopher B. Gilbert  
Thompson & Horton LLP  
711 Louisiana Street, Suite 2100  
Houston, Texas 77002-2746

OR2009-15544

Dear Mr. Gilbert:

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# 360115.

The Houston Independent School District (the "district"), which you represent, received a request for all e-mail correspondence between specified individuals during a certain time period. You state the district will provide some of the requested information to the requestor.<sup>1</sup> You claim the submitted e-mails and candidate progress report are excepted from disclosure under sections 552.101, 552.102, 552.126, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim portions of Exhibit B and all of Exhibit C are excepted from disclosure under section 552.126 of the Government Code, which 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. 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 language similar to section 552.126, protects identities of applicants for chief executive officer of institutions

<sup>1</sup>You state the district notified the third party whose proprietary interests may be implicated by the release of this information. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). You further state the third party responded to the district and "disavowed any proprietary interest [it] might have in the [information]."

of higher education—as applying to identities, rather than just names of applicants). This office has previously held 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, you state the district is in the preliminary stages of searching for a new superintendent and the district's school board has not named any candidate finalists. You assert the names you have highlighted in blue in the e-mail submitted as Exhibit B and the entire candidate progress report submitted as Exhibit C are excepted from disclosure under section 552.126. Based on your representations and our review, we agree the blue highlighted names in Exhibit B and portions of Exhibit C, which we have marked, identify or tend to identify particular candidates. Thus, the district may withhold the blue highlighted names in Exhibit B and the marked information in Exhibit C pursuant to section 552.126 of the Government Code. You have failed to demonstrate, however, how the remaining information in Exhibit C, which consists of consultant contact and general candidate information, identifies or tends to identify particular candidates. Consequently, the remaining information in Exhibit C may not be withheld under section 552.126 of the Government Code.

You assert the remaining consultant contact and general candidate information in Exhibit C is confidential under both common-law and constitutional privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, you have failed to demonstrate how any of part of the remaining consultant contact and general candidate information in Exhibit C constitutes highly intimate or embarrassing information. Furthermore, we find there is a legitimate public interest in the general candidate information as it pertains to the candidates' employment qualifications and backgrounds. Therefore, the remaining information in Exhibit C may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding

disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not explained how the remaining consultant contact and general candidate information in Exhibit C pertains to the zones of privacy. Furthermore, we find the public's need to know information relating to the employment qualifications and backgrounds of potential government employees generally outweighs an individual's privacy interests for purposes of constitutional privacy. Thus, we find you have not demonstrated how any portion of the remaining information in Exhibit C falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Accordingly, no part of the remaining information in Exhibit C may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

You assert the remaining information in Exhibit C is confidential pursuant to section 552.102 of the Government Code. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). As you acknowledge, the information in Exhibit C pertains to candidates being considered for the district's superintendent position, and not to actual district employees. Thus, you have failed to demonstrate the applicability of section 552.102 to the remaining information in Exhibit C. Consequently, this information may not be withheld under section 552.102 of the Government Code.

You claim some of the e-mail addresses in the remaining information are confidential under section 552.137 of the Government Code. This section provides "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(c). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Furthermore, because a person may consent to the public disclosure of his or her e-mail address, we find the person has a right of access to his or her own e-mail address. *See id.* § 552.137(b).

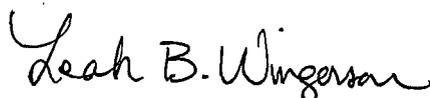
You have highlighted in yellow the e-mail addresses you seek to withhold. We note, however, that some of those e-mail addresses belong to consultants hired by the district, a district employee, and the requestor. Thus, those e-mail addresses, a representative sample of which we have marked, may not be withheld under section 552.137 of the Government Code. *See id.* §§ 552.137(c)(1). You state the owners of the remaining yellow highlighted e-mail addresses have not consented to the release of their information. Accordingly, the district must withhold the remaining yellow highlighted e-mail addresses under section 552.137 of the Government Code.

In summary, the district may withhold the blue highlighted names in Exhibit B and the marked information in Exhibit C pursuant to section 552.126 of the Government Code. With the exception of the e-mail addresses we have marked for release, the district must withhold the yellow highlighted e-mail addresses under section 552.137 of the Government Code. The remaining information must be released.

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](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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 360115

Enc. Submitted documents

c: Requestor  
(w/o enclosures)