



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

Mr. Sydney W. Falk, Jr.
Attorney for Austin Independent School District
Bickerstaff Heath Delgado Acosta LLP
3711 South MoPac Expressway, Building one, Suite 300
Austin, Texas 78746

OR2009-15643

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# 360524.

The Austin Independent School District (the "district") received a request for the names of non-finalist applicants for the superintendent position and information responsive to a previous request for information.¹ You state you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, 552.126, 552.136, and 552.137 of the Government Code. You also claim release of a portion of the submitted information may implicate the proprietary interests of PROACT Search, Inc. ("PROACT"). Accordingly, you state, and provide documentation showing, you notified PROACT of the request and of the company's right to submit arguments to this office as to why the e-mail at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances). We have received comments from PROACT. We have

¹You state the district sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, you state some of the submitted information is encompassed by a previous open records letter ruling that is the subject of pending litigation in *Austin Independent School District v. Abbott*, Cause No. D-1-GV-09-001177, 201st District Court of Travis County, Texas. The district's arguments to withhold this information are the same as those in the pending litigation. Accordingly, this decision does not address the district's arguments with regard to the information subject to the pending litigation contained in the submitted information. We will allow the trial court to determine whether any of that information must be released to this requestor.³

Next, you state the remaining information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-06365 (2009). In that ruling, this office concluded portions of the remaining information may be withheld under section 552.126 and section 552.111 of the Government Code and the remaining information must be released. With respect to the information ruled upon under section 552.126, although the district had not chosen a superintendent at the time the request on which our prior ruling was based was received, the documents at issue do not contain any information identifying the district's lone finalist. As such, the fact that a finalist has been chosen does not affect our ruling with respect to these documents. Accordingly, as we have no indication that the law, facts, or circumstances on which our prior ruling was based have changed, you must continue to rely on that prior ruling as a previous determination and withhold or release the remaining information in accordance with Open Records Letter No. 2009-06365.⁴ See Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³As we are able to make this determination, we do not address your arguments against disclosure of this information.

⁴As our ruling for this information is dispositive, we need not address the arguments against its disclosure submitted by PROACT or the district.

In summary, we decline to issue a decision with regards to the same information at issue in the pending litigation between the district and this office. The remaining information must be withheld or released in accordance with our ruling in Open Records Letter No. 2009-06365.

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,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#360524

Enc. Submitted documents

c: Requestor
(w/o enclosures)

cc: Ms. Nancy R. Noeske, Ph. D.
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(w/o enclosures)