



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 8, 2014

Mr. Larry A. Baskind  
Counsel for Tornillo Independent School District  
Baskind & Hosford, P.C.  
300 East Main, Suite 908  
El Paso, Texas 79901-1379

OR2014-15752

Dear Ms. Baskind:

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# 535393.

The Tornillo Independent School District (the "district"), which you represent, received a request for the applications for the district's superintendent position, and any notes the board of trustees took during the interview process of the superintendent candidates. You state the district does not have some information.<sup>1</sup> You claim 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.

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. 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

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 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.* at 4.

You state the submitted information consists of the applications, including resumes and related materials, of the persons who applied for the superintendent position. Accordingly, you seek to withhold the submitted information in its entirety under 552.126. However, we understand prior to the date of the instant request, the district's board named a lone finalist for the position. Thus, the district may not withhold the information that identifies or tends to identify the lone finalist. However, based on your representations and our review, we agree the remaining information identifies particular candidates for the position of superintendent. Therefore, with the exception of the information pertaining to the lone finalist, the district must withhold the submitted information under section 552.126 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>2</sup> Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21<sup>1</sup> of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also determined an “administrator” for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* at 5; *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin, 2006, no pet.).

We note the submitted information contains evaluations of the employee whose information is at issue. The submitted information demonstrates this employee was certified as a teacher

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or an administrator under chapter 21 of the Education Code and was acting as a teacher or an administrator at the time the evaluations were prepared. Upon review, we find the information we have indicated consists of teacher or administrator evaluations subject to section 21.355 of the Education Code, and the district must withhold the indicated information under section 552.101 of the Government Code on that basis.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Accordingly, with the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts, which we have indicated, pursuant to section 552.102(b) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have indicated must be withheld under section 552.117(a)(1). The district may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Upon review, the district must withhold the e-mail addresses we have indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, with the exception of the information pertaining to the lone finalist, the district must withhold the submitted information under section 552.126 of the Government Code. The district must withhold the evaluations we have indicated under section 552.101 of the Government Code in conjunction with 21.355 of the Education Code. With the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the

submitted college transcripts, which we have indicated, pursuant to section 552.102(b) of the Government Code. If the employee whose information is at issue timely requested confidentiality pursuant to section 552.024, the district must withhold the information we have indicated under section 552.117(a)(1) of the Government Code. The district must withhold the e-mail addresses we have indicated under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lauren Dahlstein  
Assistant Attorney General  
Open Records Division

LMD/som

Ref: ID# 535393

Enc. Submitted documents

c: Requestor  
(w/o enclosures)