



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 27, 2015

Mr. Darin Darby  
Counsel for Fort Worth Independent School District  
Escamilla & Poneck, L.L.P.  
700 North St. Mary's Street, Suite 850  
San Antonio, Texas 78205

Ms. Ramona Soto  
Attorney  
Fort Worth Independent School District  
100 North University Drive, Southwest Suite 172  
Fort Worth, Texas 76107

OR2015-08032

Dear Mr. Darby and Ms. Soto:

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# 561689.

The Fort Worth Independent School District (the "district"), which you represent, received two requests for information pertaining to the hiring of a specified district superintendent. The first requestor seeks (1) communications between the district and a specified company regarding the application, recruitment, and hiring of a named individual; (2) communications between the district and the named individual; and (3) a list of the final sixteen candidates considered for the position of district superintendent. The second requestor seeks (1) a specified contract and (2) any information regarding the search for a district superintendent.<sup>1</sup>

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<sup>1</sup>You note the district sought and received clarification of the second request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

You state you will make some information available to the first requestor and have released some information to the second requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.126 of the Government Code.<sup>2</sup> We have considered the exceptions 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 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 information in Exhibit F consists of the reports, interview schedules, and applications, including resumes and related materials, of the persons who applied for the superintendent position. Accordingly, you seek to withhold the information in Exhibit F in its entirety under section 552.126. However, you state prior to the date of the instant requests, the district’s board of trustees 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 in Exhibit F 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 information in Exhibit F under section 552.126 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “to facilitate the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex.

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<sup>2</sup>Although you raise sections 552.101 and 552.111 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claims these sections apply to the submitted information. *See* Gov’t Code §§ 52.301, .302.

App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information in Exhibit G constitutes communications between outside counsel, district employees, and district consultants that were made for the purpose of facilitating the rendition of professional legal services to the district. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the district may withhold the information in Exhibit G under section 552.107(1) of the Government Code.

In summary, with the exception of the information pertaining to the lone finalist, the district must withhold the information in Exhibit F under section 552.126 of the Government Code. The district may withhold the information in Exhibit G under section 552.107(1) 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.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,

A handwritten signature in black ink, appearing to read "Cristian Rosas-Grillet". The signature is fluid and cursive, with the first name being the most prominent.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/cbz

Ref: ID# 561689

Enc. Submitted documents

c: Requestor  
(w/o enclosures)