



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 7, 2016

Ms. Becky N. Rangel
Legal Service Specialist
Humble Independent School District
P.O. Box 2000
Humble, Texas 77347-2000

OR2016-20223

Dear Ms. Rangel:

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# 625655.

The Humble Independent School District (the "district") received a request for all communications including specified phrases from the district's Board of Trustees or certain district employees. You state you have released some information to the requestor. You state you do not have some of the requested information.¹ You claim the submitted

¹The 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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

information is excepted from disclosure under section 552.126 of the Government Code.² 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 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.

The district states the submitted information consists of information pertaining to the applicants for the district’s superintendent position. Accordingly, the district seeks to withhold the submitted information in its entirety under section 552.126 of the Government Code. The district states prior to the date of the instant request, 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. Based on the district’s representations and our review, we agree some of the remaining information identifies particular candidates for the position of superintendent. Therefore, the district must withhold the information we have marked under section 552.126. However, upon review, we find the district has failed to demonstrate the remaining information identifies or tends to identify any particular candidate for the position of superintendent. Therefore, the district may not withhold the remaining information under section 552.126. As no other exceptions to disclosure have been raised, the district must release the remaining information.

We understand the district to ask this office to issue a previous determination permitting the district to withhold information identifying particular candidates for the district’s superintendent search under section 552.126 of the Government Code without seeking a ruling from this office. *See* Gov’t Code § 552.301(a) (allowing governmental body to

²We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov’t Code § 552.301(b). Nevertheless, because section 552.126 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of section 552.126 to the submitted information. *See id.* §§ 552.007, .302, .352. Although you raise section 552.101 of the Government Code in conjunction with section 552.126 of the Government Code, we note section 552.101 does not encompass other exceptions in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). We decline to issue such a previous determination at this time. Accordingly, this letter ruling is limited to the particular records 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 records 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, 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/bhf

Ref: ID# 625655

Enc. Submitted documents

c: Requestor
(w/o enclosures)