



February 1, 2000

Ms. Sue M. Lee
Henslee, Fowler, Hepworth & Schwartz
816 Congress Avenue, Suite 800
Austin, Texas 78701-2443

OR2000-0335

Dear Ms. Lee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID#133142.

Weatherford Independent School District (“the school district”), which you represent, received requests for certain information regarding applicants for the vacant head football coach/Athletic Director’s position. You claim that the information requested should be withheld in its entirety under sections 552.101, 552.102, and 552.117 of the Texas Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information, consisting of cover letters and resumes.¹

Section 552.117 of the Government Code excepts from public disclosure information relating to personal information of current or former government employees or officials. This section, by its terms, applies only to current or former government employees or officials. It does not apply to applicants for government employment, and we have so stated. *See, e.g.*, Open Records Decision No. 455 (1987) (section 552.117 does not apply to applicants). Because you inform us that your concern relates solely to applicants for a government position, you may not withhold the requested information under section 552.117.

You also argue that section 552.102 protects the requested information. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would

¹We presume 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.

constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). However, this provision again concerns only information in the personnel file of an employee of a governmental body. Because the applicants are not employees of the school district, section 552.102 is likewise inapplicable.

You also assert a right to privacy under Government Code section 552.101 stating that an applicant has a legitimate privacy interest in withholding from his current employer the fact that he is seeking employment elsewhere. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You cite no statute or judicial decision, and we are aware of none, protecting an applicant’s right to have the fact of his application remain undisclosed. For information to be protected from public disclosure under the common law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). The court stated that information is deemed confidential by law if:

- (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and
- (2) the information is not of legitimate concern to the public.

Id. at 685; Open Records Decision No. 142 at 4 (1976) (construing statutory predecessor to section 552.101). This office has previously concluded that the public has a significant interest in the names of applicants for public positions and these names are not confidential. Open Records Decision No. 602 (1992) (except for the names of applicants for positions as chief executive officers of institutions of higher education). *See also Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.); Open Records Decision Nos. 585 (1991), 439 (1986), 264 (1981). Therefore, you may not withhold the information under section 552.101 in conjunction with common law privacy.

Regarding your concern that one of the applicants specifically requested that his current employers not be contacted prior to consultation with him, we note that a governmental body cannot promise to keep information confidential if the Public Information Act requires that the information be available to the public absent specific statutory authority to do so. Attorney General Opinion H-258 (1974); Open Records Decision Nos. 585 at 2 (1991), 514 at 1 (1988), 55A at 2 (1975). Accordingly, the school district may not withhold the requested information.

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 example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/CHS/cwt

Ref: ID# 133142

Encl. Submitted documents

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