



February 20, 2001

Mr. Robert L. Kane
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2001-0614

Dear Mr. Kane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144317.

The University of Texas System (the "system") received a request for (1) a particular report prepared by the Board of Regents documenting the status of the system's affirmative action policies, and (2) any documentation concerning the gender, racial, or ethnic makeup of the University of Texas Health Science Center San Antonio (the "UTHSCSA") Presidential Search Committee or the candidate pool for the UTHSCSA presidency position. You state that you have released some of the requested information. However, you claim that the requested information regarding the applicants for the UTHSCSA presidency position is excepted under section 552.123. We have considered the exception you claim and reviewed the submitted list of applicants and curriculum vitae.¹

Section 552.123 excepts from required public disclosure the "name of an applicant for the position of chief executive officer of an institution of higher education ... except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person."

The system is an institution of higher education. *See, e.g.*, Educ. Code §61.003. You indicate that the presidency position is that of "chief executive officer" which, under section 85.17(b) of the Education Code, is filled by appointment by the system's board of regents. While you state that the submitted documents do not explicitly contain the gender, race, or ethnicity of the applicants, you explain that such information may be gleaned from

¹Because you have not submitted any other information, we assume this is the only information you possess that is responsive to the request for information regarding the gender, racial, and ethnic make-up of the applicant pool for the presidency position.

the identities of the applicants. Therefore, you seek to withhold the submitted information under section 552.123. Based on your representations and our review of the information, we conclude you may withhold the submitted information under section 552.123 of the Government Code. *See* Open Records Decision No. 540 (1990).²

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).

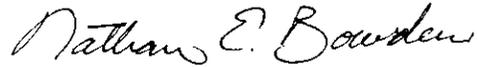
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

²You note that finalists for the presidency position have already been named and a president has already been appointed. You further indicate that you have released the names of the finalists as required by section 552.123 of the Government Code.

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,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 144317

Encl: Submitted documents

cc: Mr. Jason P. Scheppers, P.E.
11711 Wall Street # 16101
San Antonio, Texas 78230
(w/o enclosures)