



June 24, 2002

Mr. Robert E. Luna  
4411 North Central Expressway  
Dallas, Texas 75205

OR2002-3401

Dear Mr. Luna:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165081.

The Coppell Independent School District (the "district"), which you represent, received a request for the following information:

The list of nine candidates interviewed for the position of superintendent of the [district].

The list of seven (semi) finalists for the position of superintendent for the [district].

The list of three candidates called back for follow-up interviews with the [district] for the position of [district] superintendent.

Any and all contact information the [district] has for the above individuals.

You assert that there is no information that matches the specific designations given by the requestor. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1

(1990), 555 at 1-2 (1990), 416 at 5 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). The district has identified information in its possession from which the requested information can be obtained, and has provided that information to this office as responsive to the request. You state that the contact information pertaining to the individual who has been named finalist will be released to the public. You claim, however, that 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 excepts from required public disclosure “[t]he name of an applicant for the position of superintendent of a public school district[.]” Gov’t Code § 552.126. Section 552.126 provides, however, 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 the date of a meeting at which a final action or vote is to be taken on the employment of the person.” *Id.* You inform this office that on April 15, 2002, the district’s board of trustees held a special called meeting and announced its choice of the finalist for the school superintendent’s position. You have provided a copy of the press release regarding this announcement. You also inform us that the board has not yet officially appointed the individual who was selected as the finalist for the superintendent’s position, although a meeting is scheduled to consider the matter. None of the information pertaining to the individual who has been named a finalist may be withheld under section 552.126. We find that much of the rest of the information for which you claim the protection of section 552.126 identifies or tends to identify individual applicants. Such information may be withheld under section 552.126. *See* Open Records Decision No. 540 (1990) (interpreting section 552.123 -- which, in similar language 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). We have marked the information that the district may withhold under section 552.126. The remainder of the submitted information must be released to the requestor.

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 Department of Public 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 Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 165081

Enc. Submitted documents

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