



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 14, 2005

Ms. Kari Hutchison  
Director, Communications  
Comal Independent School District  
1421 North Business 35  
New Braunfels, Texas 78130

OR2005-08388

Dear Ms. Hutchison:

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# 232180.

The Comal Independent School District (the "district") received a request for a list of the names of the final four candidates for superintendent. You claim that the requested 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.

As a preliminary matter, we address your contention that the submitted information is not responsive to the request for information. You inform us that "[a]t the time the request was received by the District, a formal list of the 'final four candidates' did not exist." We note that the 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. *Econ. 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 must make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990) (construing statutory predecessor). The documents you have submitted for our review relates to the names of applicants to be interviewed for the superintendent position. Based on our review,

we find that the district has made a good-faith effort to relate the request for information to the submitted document that the district maintains. Accordingly, we will address your arguments against disclosure of this information.

Section 552.126 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. You explain that as of the date of the request, the district was interviewing and narrowing the list of applicants, however, “the Board of Trustees of the District has not made a determination of the finalist(s) for the position of Superintendent.” Thus, based on your representations, we conclude that you may withhold the list of applicants for the superintendent position. *Compare* Open Records Decision No. 540 (1990).

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).

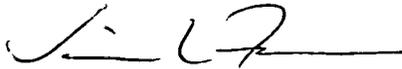
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/seg

Ref: ID# 232180

Enc. Submitted documents

c: Ms. Leigh Jones  
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New Braunfels Herald-Zeitung  
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(w/o enclosures)