



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2005

Mr. Christopher M. Gilbert
Bracewell and Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2005-09347

Dear Mr. Gilbert:

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# 234606.

The Huntsville Independent School District (the "district"), which you represent, received a request for information concerning the superintendent hiring process, the names and resumes of the six candidates who interviewed for the position, and the current superintendent's approved salary. You state that you will release the information concerning the superintendent hiring process and the current superintendent's approved salary, but claim that the remaining information is excepted from disclosure under section 552.101 and 552.126 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by one of the applicants. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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. In this instance, you state that the district has already identified and hired the finalist as the district's superintendent. You assert, however, and we agree, that the names of the remaining applicants for the position of superintendent are excepted from disclosure under section 552.126. Furthermore, this protection from disclosure extends not only to the names of the individuals, but also to any information tending to identify the individual. *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). This office has previously held that 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.* Thus, in this case, the district may withhold the names and resumes of the applicants for the position of superintendent pursuant to section 552.126. As our ruling on this issue is dispositive, we need not address your remaining argument.

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,

A handwritten signature in black ink, appearing to read 'J. Vela III', with a long horizontal flourish extending to the right.

José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 234606

Enc. Submitted documents

c: David Lyons
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