



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 3, 2008

Mr. Scott A. Kelly
Deputy General Counsel
Texas A&M System
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845-3424

OR2008-07544

Dear Mr. Kelly:

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# 311840.

The Texas A&M University System (the "system") received a request for documents submitted to the system's Chancellor containing the names of candidates for President of Tarleton State University recommended by the Presidential Search Advisory Committee. You claim that most of the requested information is excepted from disclosure under section 552.123 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.123 of the Government Code 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.

Gov't Code § 552.123. Section 552.123 permits the withholding of *any* identifying information about the candidates, not just their names. Open Records Decision No. 540

(1990) (construing statutory predecessor to section 552.123). Examples of information identifying individuals might include, but are 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.* at 4. In addition, the exception protects the identities of all persons being considered for the position of university chief executive officer, whether they are nominated or apply on their own initiative. *Id.* at 5.

Tarleton State University is an "institution of higher education" as defined by section 61.003(8) of the Texas Education Code. Educ. Code § 61.003(8). You inform us that the president is the "chief executive officer." You state that the requested information contains names and other identifying information of candidates selected for the president position by the Presidential Search Advisory Committee. You also inform us that these candidates have not been named as finalists for the president position. Based on your representations and our review of the submitted information, we conclude that the system may withhold the information you have marked under section 552.123 of the Government Code. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Katherine M. Kroll
Assistant Attorney General
Open Records Division

KMK/eeg

Ref: ID# 311840

Enc. Submitted documents

c: Ms. Jessica Edwards
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Stephenville, Texas 76401
(w/o enclosures)