



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 21, 2009

Mr. Rusty Brittain  
President  
Port Neches-Groves Independent School District  
620 Avenue C  
Port Neches, Texas 77651

OR2009-00859

Dear Mr. Brittain:

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# 337913.

The Port Neches-Grove Independent School District (the "district") received six requests from different requestors for information regarding the applicants for the head coach/athletic director position. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.117, and 552.126 of the Government Code. We have considered the exceptions you claim and reviewed the information you have submitted. We have also received and considered comments submitted by two of the requestors. See Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act. See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (citing *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976)). Accordingly, we will consider your common-law privacy claim under both sections 552.101 and 552.102 of the Government Code.

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable

person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that information pertaining to the qualifications of an applicant for public employment is generally of legitimate public interest. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning performances of governmental employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow). Further, this office has found that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common-law privacy. See Open Records Decision No. 455 (1987) (absent special circumstances, the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). The information you seek to withhold consist of information pertaining to applicants of the district, including names, hometowns, number of years of experience, and current employers. Upon review, we find you have failed to explain how any portion of the submitted information constitutes highly intimate or embarrassing information that is not of legitimate public interest. Therefore, you may not withhold any portion of the submitted information pursuant to section 552.102 of the Government Code in conjunction with common-law privacy.

You claim the submitted information is subject to section 552.117. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). We note that the protection of section 552.117 is applicable only to information that a governmental body holds in its capacity as an employer. See Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information held by their employers); see also *id.* § 552.024 (establishing election process for Gov't Code § 552.117). Section 552.117(a)(1) only applies to current or former employees of the district and not applicants for employment or employees of governmental bodies other than the district. Open Records Decision No. 455 at 2 (1987). The information you have marked pertains to applicants of the district, rather than employees of the district. Therefore, the district may not withhold any portion of the submitted information under section 552.117(a)(1) of the Government Code.

Next, you claim section 552.126 for the submitted information. Section 552.126 of the Government Code 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. Gov't Code § 552.126. However, the applicants at issue seek a position as the head football coach/athletic director, not superintendent. You contend that because this is also a high profile position, it should be afforded the same protection. This office has determined that statutory confidentiality requires express language making the information at issue confidential. Open Records Decision No. 478 at 2 (1987); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality must be express, and confidentiality requirement will not be implied from statutory structure). As the language of section 552.126 is expressly limited to applicants for the position of superintendent, section 552.126 is inapplicable to the submitted information and none of the information may be withheld on that basis. As you claim no other exceptions to disclosure of the submitted information, it must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/eeg

Ref: ID# 337913

Enc. Submitted documents

c: Requestor (7)  
(w/o enclosures)