



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2009

Mr. Sydney W. Falk, Jr.
AISD Attorney
Bickerstaff Heath Delgado Acosta LLP
816 Congress Avenue, Suite 1700
Austin, Texas 78701

OR2009-08388

Dear Mr. Falk:

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# 344950.

The Austin Independent School District (the "district"), which you represent, received a request for three categories of information pertaining to the district's search for a superintendent. You state you have released some responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.111 and 552.126 of the Government Code. You also claim releasing the e-mail in Exhibit C may implicate the proprietary interests of PROACT Search, Inc. ("PROACT"). Accordingly, you state, and provide documentation showing, you notified PROACT of the request and of the company's right to submit arguments to this office as to why the e-mail at issue should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances).* We have received comments from PROACT. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988).* This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that in Open Records Letter No. 2009-06365 (2009), this office previously ruled upon the information currently submitted as Documents B-1, B-2, B-3, B-5, C-1, and the first page of Document B-4. In that ruling, this office concluded certain portions of these documents were excepted from disclosure under section 552.126, but held the remaining portions must be released. Although the district had not chosen a superintendent at the time the request on which our prior ruling was based was received, Documents B-1, B-2, B-3, B-5, C-1, and the first page of Document B-4 do not contain any information identifying the district's lone finalist. As such, the fact that a finalist has been chosen does not affect our ruling with respect to these documents. Accordingly, as we have no indication that the law, facts, or circumstances on which our prior ruling was based have changed, you must continue to rely on this prior ruling as a previous determination for this information and withhold or release the information in Documents B-1, B-2, B-3, B-5, C-1, and the first page of Document B-4. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).²

You claim that the remaining documents submitted in Exhibit B are excepted from disclosure, in whole or in part, under section 552.126 of the Government Code. This section 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. Furthermore, this protection from disclosure extends not only to the names of the individuals, but also to any information tending to identify the individuals. *See* Open Records Decision No. 540 (1990) (interpreting section 552.123 – which, in language similar to section 552.126, protects identities of applicants for chief executive officer of institutions of higher education – as applying to identities, rather than just names of applicants). This office has previously held the type of information that identifies individuals in such cases includes, but is not limited to, résumés, 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.* In this instance, you state that "on February 26, 2009, [the district] named a lone finalist for the position of Superintendent." Thus, you acknowledge that information which tends to identify the district's finalist may not be withheld under section 552.126.

You assert, however, that the identifying information of the remaining applicants for the position of superintendent is excepted from disclosure under section 552.126. Although you acknowledge that only portions of these documents identify or tend to identify particular candidates, you argue some of the remaining content, when combined with other information

²As our ruling is dispositive with respect to this information, we need not address the arguments against its disclosure submitted by PROACT or the district.

reported in the media and elsewhere, would tend to identify some of the candidates. We note, however, that section 552.126 applies only to information that, on its face, identifies or tends to identify particular candidates. This office cannot extend the protection of section 552.126 to include information that could identify or tend to identify candidates based on what you characterize as the requestor's detective work. *Cf. Star-Telegram v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995) (disclosure of certain facts that would enable "knowledgeable friends and acquaintances" to identify victim of sexual assault did not implicate victim's privacy interests where victim's name not disclosed to public). Therefore, we find you have failed to demonstrate how some of the information you have marked in Exhibit B identifies or tends to identify the remaining candidates.³ However, we find some of the information in Exhibit B identifies or tends to identify the remaining particular candidates. Thus, the district may withhold the information we have marked in Exhibit B pursuant to section 552.126 of the Government Code.

The remaining information in Exhibit B contains credit or debit card and access device numbers. Section 552.136 states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential."⁴ Gov't Code § 552.136(b). The district must withhold the credit or debit card and access device numbers we have marked under section 552.136 of the Government Code.

Exhibit B also contains a private e-mail address that is subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue does not appear to be specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail address we marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.

In summary, the district must continue to rely on Open Records Letter No. 2009-06365 as a previous determination for Documents B-1, B-2, B-3, B-5, C-1, and the first page of

³Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). Parts of the travel reimbursement documents have been redacted. You do not assert, nor does our review of the records indicate, that you have been authorized to withhold any of the redacted information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001) (discussing standard for issuance of previous determinations). Because the district failed to comply with section 552.301 with respect to these documents, the redacted information must be released. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Document B-4 and withhold or release this information accordingly. The district may withhold the information we have marked in Exhibit B under section 552.126. The district must withhold the credit or debit card and access device numbers we marked under section 552.136 and the e-mail address we marked under section 552.137. The remaining submitted information 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, 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 344950

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

Ms. Nancy R. Noeske, Ph.D.
President
PROACT Search, Inc.
126 North Jefferson Street, Suite 360
Milwaukee, Wisconsin 53202
(w/o enclosures)