



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 8, 2016

Mr. Jose J. Villanueva
Assistant Superintendent for Human Resources
Donna Independent School District
116 North 10th Street
Donna, Texas 78537

OR2016-24919

Dear Mr. Villanueva:

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# 633523.

The Donna Independent School District (the "district") received a request for a list of all applicants who applied or inquired into the superintendent position, including the applicant's name, experience, school district, and town. You claim the submitted 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.

Initially, we understand you to assert the requested information is not subject to the Act because the district does not possess or maintain the requested information. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines "public information" as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002(a). Thus, virtually all information in a governmental body's physical possession constitutes public information subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess. Information that is written, produced, collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns, has a right of access, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information. Gov't Code § 552.002(a); *see* Open Records Decision No. 462 at 4 (1987); *cf.* Open Records Decision No. 499 (1988). Additionally, information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov't Code § 552.002(a-1).

You state you are "not in possession of [the requested] information since an outside agency managed the entire selection process." You state the information at issue is maintained by the law firm Walsh, Gallegos, Trevino, Russo & Kyle P.C ("Walsh"). However, we understand the district has contracted with Walsh to receive, screen, and respond to applications submitted to the district, and to conduct a formal search and selection process to fill the vacant position within the district. Thus, we find public money was spent for the purpose of writing, producing, collecting, assembling, or maintaining the information at issue. *See id.* § 552.002(a)(2)(C). We further find Walsh is acting on behalf of the district as its agent. Thus, we find the information at issue was created and is maintained by Walsh on behalf of the district and the district owns or has a right of access to this information. *Id.* § 552.002(a), (a-1). Furthermore, the information pertains to the transaction of official district business. Accordingly, the information at issue constitutes "public information" as defined by section 552.002(a) and is subject to the Act.

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. *Id.* § 552.126. Furthermore, this protection from disclosure extends not only to the name of the individual, but also to any information tending to identify the individual. *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 institution of higher education—as applying to identities, rather than just names of applicants). This office has previously held

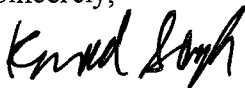
the type of information that identifies individuals in such cases includes, but is not limited to, resumes, professional qualifications, membership in professional organizations, dates of birth, current positions, publications, letters of recommendation, or any other information that can be uniquely associated with a particular applicant. *Id.* at 4.

We understand the district to assert the requested information consists of information pertaining to the applicants for the district's superintendent position. Accordingly, the district seeks to withhold the requested information in its entirety under section 552.126 of the Government Code. You state prior to the date of the instant request, the district's Board of Trustees named a lone finalist for the position. Thus, the district may not withhold the information that identifies or tends to identify the lone finalist. However, we agree the remaining requested information identifies or tends to identify other candidates for the position of superintendent. Therefore, the district may withhold the remaining requested information that identifies or tends to identify other candidates for the position of superintendent under section 552.126 of the Government Code. As no other exceptions to disclosure have been raised, the remaining requested 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kavid Singh
Assistant Attorney General
Open Records Division

KVS/bhf

Ref: ID# 633523

Enc. Submitted documents

c: Requestor