



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2008

Ms. Margo M. Kaiser  
Staff Attorney  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778

OR2008-17294

Dear Ms. Kaiser:

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# 330654. (Texas Workforce Commission tracking No. 081002-041).

The Texas Workforce Commission (the "commission") received a request for certain records related to a specified unemployment compensation matter, as well as personnel records and other information regarding a named hearing officer. You inform us that some of the requested information has been withheld pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code. You also contend that the unemployment compensation records are not subject to the Act. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted to this office by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. Although the commission is not an education authority, you inform us that the commission obtained the educational records at issue from the educational institutions that created those documents with the consent of the student. Accordingly, we will not address the applicability of FERPA to any of the requested records.

As a preliminary matter, you contend that the request at issue was not a valid request under the Act because the request was delivered via facsimile to the commission's Appeals Department instead of the commission's designated officer. Section 552.301(c) provides that "a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission." *Id.* §552.301(c). We generally agree that a request for information sent via facsimile must be sent to the officer for public information or a person designated by that officer in order to be valid under the Act. However, in this instance, you acknowledge that the commission has already released information to the requestor in response to this facsimile request. Thus, the commission has determined that this facsimile is a valid request for information under the Act. We find that the commission may not now argue that this facsimile was never a valid request, and we therefore rule that the commission must continue to process the present request as provided under the Act.

Next, you claim that a portion of the submitted information consists of unemployment insurance claim information that is not public information for purposes of the Act. Section 301.085(c) of the Labor Code provides that "[u]nemployment compensation information is not public information for purposes of Chapter 552, Government Code." On the basis of this provision, you state that you have not submitted any responsive unemployment claim information to this office for our review. Accordingly, this ruling does not address any such information. We will, however, address your claimed exceptions for the submitted information pertaining to the named hearing officer.

You claim that certain marked information in the responsive documents is exempt from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and 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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You inform us that prior to the date the information request was received, the named hearing officer elected to keep her personal information confidential. Accordingly, we agree that you must withhold the information you have marked under section 552.117(a)(1), except where we have marked such information for release.

You also raise section 552.130 as an exception to disclosure. Section 552.130 provides in relevant part that information is excepted from disclosure if the information relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See*

Gov't Code § 552.130(a)(1). Upon review, we agree that you must withhold the Texas driver's license information you have marked under section 552.130.

You assert that some of the remaining information 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 addresses in the submitted information are not of a type specifically excluded by section 552.137(c). Further, you represent that the owners of the email addresses at issue have not consented to release. As such, these e-mail addresses, which you have marked, must be withheld under section 552.137.<sup>2</sup>

To summarize, the commission must withhold: 1) the information you have marked under section 552.117(a)(1) of the Government Code, except where we have marked such information for release; 2) the Texas driver's license information you have marked under section 552.130; and the e-mail addresses you have marked under section 552.137. The remaining submitted information must be released to the requestor.

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

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<sup>2</sup>We note that you argue to withhold the personal e-mail addresses of the named hearing officer under section 552.117. However, section 552.117 does not make e-mail addresses confidential. Accordingly, we find that the e-mail addresses of the named hearing officer that you have marked must be withheld under section 552.137, rather than section 552.117.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/jb

Ref: ID# 330654

Enc. Submitted documents

c: Requestor  
(w/o enclosures)