



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2010

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

OR2010-19330

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# 403924 (TWC Tracking No. 101004-011).

The Texas Workforce Commission (the "commission") received a request for the following categories of information pertaining to five specified career schools: (1) complaints resolution and history; (2) information pertaining to completion and employment/placement rates; (3) report of transactions; (4) school deficiencies; and (5) list of approved staff, including dates of approval. You claim that the requested information is excepted from disclosure under section 552.116 of the Government Code. You also state release of this information may implicate the proprietary interests of career schools owned by ATI Enterprises, Inc. ("ATI"). Accordingly, you state, and provide documentation showing, you notified ATI of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from a representative for ATI. 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 the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable" information is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). We note you have submitted, among other things, redacted records which may constitute education records. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to those records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record.

Next, we address ATI's argument that the request for information is overly broad and vague. We note that a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). In this case, the commission has reviewed its records and has determined that the submitted documents are responsive to the request. Accordingly, we will address the applicability of the claimed exceptions to the submitted information.

We next address ATI's contention that its information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). We understand ATI to argue that its information is not subject to the Act because ATI itself is not a governmental body. However, we note that ATI's information is in the possession of the commission, which is a governmental body as defined by section 552.003, and was collected, assembled, or maintained in connection with the transaction of the commission's official business. Therefore, we conclude that ATI's information is subject to the Act and must be released, unless the commission or ATI demonstrates that the information falls within an exception to public disclosure under the Act. *See* Gov't Code §§ 552.006, .021, .301, .302. Thus, we will consider the submitted arguments against disclosure.

²A copy of this letter may be found on the attorney general's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Next, we address the commission's argument against disclosure under section 552.116 of the Government Code, which provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Id. § 552.116. You state that the submitted information consists of audit working papers that were compiled by the commission's auditors during the course of audits authorized under sections 132.021 and 132.055 of the Education Code. *See* Educ. Code §§ 132.021, .055. Based on your representations and our review, we agree that the submitted information constitutes audit working papers under section 552.116. Accordingly, the commission may withhold the submitted information under section 552.116. As we are able to make this determination, we need not address ATI's arguments against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 403924

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)