



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2011

Ms. Margo Kaiser
Staff Attorney
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2011-01176

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# 406792 (TWC Tracking No. 101012-025).

The Texas Workforce Commission (the "commission") received a request for "all e-mails between the [commission's Career Schools Division] and Everest College/Corinthian Colleges" for a specified period of time. You state the commission will redact all educational records that the educational institute from which the commission obtained the records determines are confidential pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g).¹ You also state the commission will withhold information pursuant to Open Records Decision No. 684 (2009), and has redacted

¹We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution 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. See 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

information pursuant to section 552.147 of the Government Code.² You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.116, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.116 of the Government Code 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.

²Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Gov't Code § 552.116. You state that the information at issue consists of audit working papers that were compiled by the commission during the course of investigations into and oversight of career schools subject to the jurisdiction of the commission, as authorized under sections 132.021 and 132.058 of the Education Code. *See* Educ. Code §§ 132.021, .058 (authorizing the commission to revoke or place conditions upon an issued certificate of approval if the commission has reasonable cause to believe the school violated chapter 132 of the Education Code or any rules adopted thereunder); *see also* 40 T.A.C. 807.302 (providing the commission's regulations regarding requirements for an investigation of a complaint against a career school subject to jurisdiction and control of the commission). You state the commission will release any final audit reports. Based on your representations and our review, we agree that the information you have marked constitutes audit working papers under section 552.116. Accordingly, the commission may withhold the information you have marked under section 552.116.⁴

Section 552.137 of the Government Code makes certain e-mail addresses confidential. 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). Gov't Code § 552.137(a)-(c). The e-mail address you have marked is not one of the types specifically excluded by section 552.137(c). You do not inform us that the individual whose e-mail address is at issue has affirmatively consented to the release of the e-mail address you have marked. Accordingly, the commission must withhold the e-mail address it has marked under section 552.137 of the Government Code unless the owner of the address has affirmatively consented to its release under section 552.137(b).

In summary: (1) the commission may withhold the information it has marked under section 552.116 of the Government Code; and (2) the commission must withhold the e-mail address it has marked under section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release.

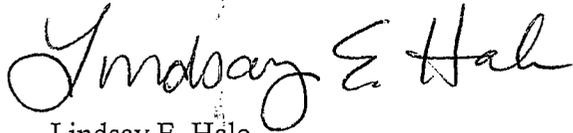
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 406792

Enc. Submitted documents

c: Requestor
(w/o enclosures)