



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

OR2011-01177

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# 406795 (TWC Tracking No. 101012-024).

The Texas Workforce Commission (the "commission") received a request for all emails between the commission's career schools division and a named career school during the sixty days preceding the request. You state that the commission will withhold social security numbers as permitted by section 552.147(b).¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.116, and 552.136 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.²

¹Section 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 under the Act.

²We 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 address your statement that the commission has withheld some records pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g). Additionally, you have marked portions of the submitted documents pursuant to FERPA. 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.³ See 34 C.F.R. 99.3 (defining "personally identifiable information"). Although the commission is not an education authority, you inform us that the commission obtained the education records during the course of its investigation. See *id.* § 99.33(a)(2). Because our office is prohibited from reviewing the education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the submitted records. Such determinations under FERPA must be made by the educational authority from which the education records were obtained. You state the commission will contact the educational institution from which the education records at issue were obtained regarding the applicability of FERPA to the education records.

We now address the commission's arguments against disclosure. Section 552.116 of the Government Code provides:

(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:

³ A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

(A) intra-agency and interagency communications; and

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

Gov't Code § 552.116. You assert that the information marked under this section consists of audit working papers that were compiled by the commission's auditors during the course of audits authorized under sections 132.021 and 132.058 of the Education Code. *See* Educ. Code §§ 132.021, .058. Based on your representations and our review, we agree that the marked information constitutes audit working papers under section 552.116. Accordingly, the commission may withhold the information you have marked under section 552.116.

Section 552.101 encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). This office has found that information pertaining to certain personal financial decisions is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Upon review, we find the information we have marked under section 552.101 is highly intimate or embarrassing and not of legitimate public concern. Accordingly, the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

You have marked certain information in the remaining documents pursuant to Open Records Decision No. 684 (2009). That decision is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including bank account numbers and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an opinion from this office. We note that check numbers are not subject to Open Records Decision No. 684 and may not be redacted without requesting an opinion from this office. Therefore, we will address the applicability of section 552.136. This section provides 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." Gov't Code § 552.136(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). However, a check number does not constitute an access device number and may not be withheld based on section 552.136. Accordingly, the

commission must withhold only the bank account number and bank routing number we have marked under section 552.136.

In summary, the commission may withhold the information you have marked under section 552.116. The commission must withhold the information that we have marked under section 552.101 in conjunction with common-law privacy and section 552.136. The remaining 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, toll free at (888) 672-6787.

Sincerely,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID # 406975

Enc. Submitted documents

c: Requestor
(w/o enclosures)