



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2011

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

OR2011-02344

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# 409861 (TWC Tracking No. 101202-023).

The Texas Workforce Commission (the "commission") received a request for all correspondence since January of 2008 between the commission and Everest University, Everest University Online, Florida Metropolitan University, or Corinthian Colleges regarding programs operated by those schools in Texas. You claim the requested information is excepted from disclosure under sections 552.101 through 552.1425 of the Government Code. We have considered the exceptions you claim.

Initially, it appears some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-01176 (2011). In Open Records Letter No. 2011-01176, we determined the commission may withhold the audit working papers at issue under section 552.116 of the Government Code and must withhold an e-mail address at issue under section 552.137 of the Government Code, unless the owner of the address affirmatively consented to its release. We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the commission may continue to rely on Open Records Letter No. 2011-01176 as a previous determination and withhold the information in accordance with that ruling. *See* Open Records Decision

No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2011-01176, we will address your arguments against disclosure.

We must next address the commission's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The commission received the request for information on December 2, 2010, but it has not submitted a copy of the specific information requested or representative samples of it. Thus, the commission failed to comply with the procedural requirements mandated by section 552.301.

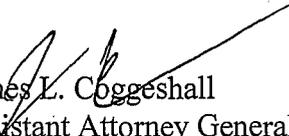
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). By failing to comply with section 552.301, you have waived the discretionary exceptions you raised. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Furthermore, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, in accordance with section 552.302 of the Government Code, we have no choice but to order you to release the responsive requested information, to the extent it is not subject to Open Records Letter No. 2011-01176. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 409861

c: Requestor