



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2011

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

OR2011-02926

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# 410389 (TWC Tracking No. 101012-026 and 101019-033).

The Texas Workforce Commission (the "commission") received two requests from the same requestor for several categories of information regarding ATI-Career Training Center ("ATC").¹ You state the commission will redact all education 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).² You also state the commission will withhold information pursuant to Open Records Decision No. 684 (2009), and has redacted information pursuant to section 552.147

¹You inform us the commission received the requests on October 12, 2010 and October 19, 2010. You state the commission provided the requestor with an estimate of charges and requested payment regarding both requests on October 25, 2010. *See* Gov't Code §§ 552.2615, .263(a). You further inform us the commission received the requestor's deposit on December 8, 2010; thus, that is the date on which the commission is deemed to have received both requests. *Id.* § 552.263(e).

²We 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>.

of the Government Code.³ You claim that the remaining requested information is excepted from disclosure pursuant to sections 552.101, 552.103, 552.116, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

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, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, 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, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, 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:

³Open 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).

⁴We 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.

(A) intra-agency and interagency communications; and

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

Gov't Code § 552.116. You state that the information submitted in response to the second request, TWC No. 101019-033, consists of audit working papers that were compiled by the commission's auditors during the course of an audit authorized under sections 132.021 and 132.055 of the Education Code. *See* Educ. Code §§ 132.021, .055. You also indicate the audit report will be released when it is final. Based on your representations and our review, we agree that the submitted information you seek to withhold constitutes audit working papers under section 552.116, and it may be withheld on that basis.⁵

You claim that a portion of the submitted information in response to the first request, TWC No. 101012-026, may be subject to section 552.137 of the Government Code. Section 552.137 of the Government Code 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). We note subsection 552.137(c)(5) states that subsection 552.137(a) does not apply to an e-mail address "provided to a governmental body for the purpose of providing public comment on or receiving notices related to an application for a license as defined by Section 2001.003(2) of [the Government Code], or receiving orders or decisions from a governmental body." *Id.* § 552.137(c)(5). Section 2001.003(2) of the Government Code defines a license as "the whole or a part of a state agency permit, certificate, approval, registration, or similar form of permission required by law." *Id.* § 2001.003(2).

You inform us that pursuant to section 132.051 of the Education Code, a career school or college such as ATI may not maintain, advertise, solicit for, or conduct any program of instruction in this state until the career school or college receives a certificate of approval from the commission. You indicate, and the submitted documents reflect, the information at issue consists of e-mail addresses that were provided to the commission by ATI for the purposes of obtaining a certificate of approval from the commission. Based upon your representations and our review, we find the e-mail addresses you have marked fall within the scope of section 552.137(c)(5). Accordingly, none of these e-mail addresses may be withheld under section 552.137 of the Government Code.

You claim that some of the remaining requested information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception

⁵As our ruling is dispositive, we need not address your remaining arguments as to this information.

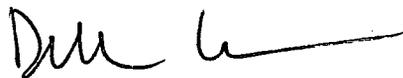
applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the information you have submitted in response to the second request, TWC No. 101019-033, may be withheld under section 552.116 of the Government Code. The remaining information you have submitted must be released to the requestor, but any information that is protected by copyright may only be released in accordance with copyright law.

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,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/dls

Ref: ID# 410389

Enc. Submitted documents

c: Requestor
(w/o enclosures)