



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2011

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

OR2011-04133

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# 412692 (TWC Tracking No. 110104-042).

The Texas Workforce Commission (the "commission") received a request for correspondence with Alta Colleges or Westwood College regarding licensing in Texas during a specified time interval, including information relating to licensing of Redstone College and Texas campuses of Westwood College. You state the commission will redact all records determined to be subject to the Family Educational Rights and Privacy Act ("FERPA") by the educational institution from which the records were obtained.¹ You also state the commission will withhold social security numbers and other information pursuant to section 552.147 of the Government Code and the previous determination issued in Open

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. A copy of the DOE's letter to this office is posted on the Attorney General's website at: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Records Decision No. 684 (2009).² You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.116 of the Government Code. You also believe the submitted information may implicate the interests of Westwood College ("Westwood"). You inform us Westwood was notified of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.³ We received correspondence from attorneys for Westwood.⁴ We have considered all the submitted arguments and reviewed the submitted representative sample of information.⁵

Initially, we address Westwood's objection to disclosure of any information that does not fall within the scope of the request. We note a governmental body that receives a request for information must make a good-faith effort to relate the request to information within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). As the commission has submitted a representative sample of information the commission deems to be responsive to the request, we will consider the commission's and Westwood's arguments against disclosure of the submitted information.

The commission claims 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

²Section 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. Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision.

³*See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exceptions to disclosure under certain circumstances).

⁴We note Westwood's attorneys have submitted information they claim the commission should withhold. This decision is applicable only to the information the commission submitted to this office in requesting the decision. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must submit specific information at issue or representative sample if information is voluminous).

⁵This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the commission to withhold any information substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

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.

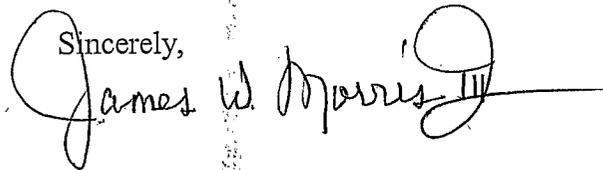
Gov't Code § 552.116. The commission contends the submitted information consists of audit working papers obtained or created during the course of an investigation of allegations a career school subject to the commission's jurisdiction was in violation of the Education Code. The commission explains it is responsible for oversight of career schools under provisions of chapter 132 of the Education Code and is authorized to revoke a certificate of approval under section 132.058; impose administrative penalties, civil penalties, and sanctions under sections 132.152, 132.155, and 132.156; and issue cease and desist orders under section 132.303. *See* Educ. Code §§ 132.021, .022, .058 (authorizing commission to revoke or place conditions on issued certificate of approval if commission has reasonable cause to believe school violated Educ. Code ch. 132 or any rules adopted thereunder); *see also* 40 T.A.C. 807.302 (providing commission's regulations regarding requirements for investigation of complaint against career school subject to commission's jurisdiction and control). The commission states it will release any final audit reports. Based on the commission's representations, we find the submitted information consists of audit working papers for purposes of section 552.116(b)(2) of the Government Code. We therefore conclude the commission may withhold the submitted information under section 552.116(a) of the Government Code.⁶

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.

⁶As we are able to make this determination, we need not address the other exceptions the commission and Westwood claim.

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,

A handwritten signature in black ink that reads "James W. Morris, III". The signature is written in a cursive style with a long horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 412692

Enc: Submitted documents

c: Requestor
(w/o enclosures)

Ms. Stacy L. Brainin
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Dallas, Texas 75219
(w/o enclosures)