



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2011

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

OR2011-04526

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# 413447 (TWC Tracking No. 110112-012).

The Texas Workforce Commission (the "commission") received a request for all records related to Everest College. You state the commission will redact all education records that the educational institution from which the commission obtained the records determines are confidential pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ 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 of the Government Code.² You claim the remaining

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>.

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).

requested information is excepted from disclosure pursuant to section 552.116 of the Government Code. We have considered the exception 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, 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:

(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 the submitted information consists of audit working papers compiled by the commission during the course of an investigation authorized under

³We 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.

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 the submitted information constitutes audit working papers under section 552.116 of the Government Code and it may be withheld on that basis.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 413447

Enc. Submitted documents

c: Requestor
(w/o enclosures)