



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2011

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

OR2011-13512

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# 430322 (TWC Tracking No. 110701-024).

The Texas Workforce Commission (the "commission") received a request for forms PS-014 and PS-014A for thirty-three named individuals "employed as admissions personnel at career school number S0024[.]" You 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.<sup>1</sup> You further state some responsive information will be provided to the requestor upon receipt of payment. You claim that some of the submitted information is not responsive to the request as it consists of judicial records which

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<sup>1</sup>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). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended sections 552.130 and 552.136 of the Government Code to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) and section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, §§ 22 (to be codified at Gov't Code § 552.130(c)), 27 (to be codified at Gov't Code § 552.136(c)). If a governmental body redacts such information, it must notify the requestor in accordance with sections 552.130(e) and 552.136(e). *See* Act of May 30, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 602, §§ 22 (to be codified at Gov't Code § 552.130(d), (e)), 27 (to be codified at Gov't Code § 552.136(d), (e)). Thus, the statutory amendments to sections 552.130 and 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, and information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

are not subject to the Act. Alternatively, you assert that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.116 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we address your claim that the Act does not apply to some of the submitted information. We note the Act generally requires the disclosure of information maintained by a “governmental body.” See Gov’t Code § 552.021. While the Act’s definition of a “governmental body” is broad, it specifically excludes “the judiciary.” See *id.* § 552.003(1) (A), (B). When an individual or entity acts at the direction of the judiciary as its agent, information prepared or collected by the agent is within the judiciary’s constructive possession and is not subject to the Act. See *generally* Open Records Decision No. 513 at 3 (1988) (information in grand jury’s constructive possession not subject to the Act). In Open Records Decision No. 646 (1996), this office determined that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department are not subject to the Act because such records are held on behalf of the judiciary. See Open Records Decision No. 646 at 4 (1996); see also Open Records Decision No. 236 at 2-3 (1980).

You assert that the records you have marked as “not responsive” are records maintained by a court or by the community supervision and corrections department attached to the court. You claim that these records comprise records of the judiciary which are not subject to required release under the Act. Upon review, however, we find you have failed to demonstrate that the commission holds these records on behalf of the judiciary as an agent of the judiciary. See ORD 646 at 2-3; *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (in determining whether governmental entity falls within judiciary exception, this office looks to whether governmental entity maintains relevant records as agent of judiciary with regard to judicial, as opposed to administrative, functions). Accordingly, we find that the information at issue does not constitute records of the judiciary for purposes of the Act. We will, therefore, address your arguments against public disclosure of the submitted information.

Section 552.116 of the Government Code provides in relevant part as follows:

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<sup>2</sup>Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 is section 552.107 of the Government Code. See Open Records Decision No. 676 at 1-2 (2002).

<sup>3</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

(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, a hospital 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 [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] 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, the bylaws adopted by or other action of the governing board of a hospital district, 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.

Act of May 29, 2011, 82<sup>nd</sup> Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as amendment to Gov't Code § 552.116(a), (b)(1)). For purposes of section 552.116, an audit working paper includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including intra-agency and interagency communications, and drafts of the audit report or portions of those drafts. Gov't Code § 552.116(b)(2).

You state the information at issue consists of audit working papers that were compiled by the commission during the course of investigations into and oversight of career schools subject to the jurisdiction of the commission, as authorized under sections 132.021 and 132.058 of the Education Code. *See* Educ. Code §§ 132.021, .058 (authorizing the commission to revoke or place conditions upon an issued certificate of approval if the commission has reasonable cause to believe the school violated chapter 132 of the Education Code or any rules adopted thereunder); *see also* 40 T.A.C. § 807.302 (providing the commission's regulations regarding requirements for an investigation of a complaint against a career school subject to jurisdiction and control of the commission). Based on your representations and our review, we agree that the information at issue constitutes audit working papers under section 552.116. Accordingly, the commission may withhold the information at issue under section 552.116. As our ruling is dispositive, we need not address the commission's remaining arguments against disclosure.

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](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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 430322

Enc. Submitted documents

c: Requestor  
(w/o enclosures)