



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 13, 2011

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

OR2011-14906

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# 432928 (TWC Tracking No. 110727-007).

The Texas Workforce Commission (the "commission") received a request for information relating to a specified career school. You state the commission will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You inform us some of the remaining requested information either has been or will be released. You claim the submitted representative sample of information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.²

Initially, we address the information you propose to redact pursuant to Open Records Decision No. 684 (2009). You state e-mail addresses will be redacted under section 552.137 of the Government Code. We agree Open Records Decision No. 684 authorizes the commission to withhold e-mail addresses of members of the public under section 552.137

¹We note section 552.147(b) 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.

²This 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 that is 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).

without the necessity of requesting an attorney general decision.³ You also state access device numbers, including bank account numbers and money order tracking numbers, will be redacted under section 552.136 of the Government Code. Although we agree bank account numbers are protected by section 552.136, we note they may now be withheld pursuant to section 552.136(c) without the necessity of requesting an attorney general decision.⁴ *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(c)). Section 552.136 is not applicable, however, to information contained in a money order. Therefore, the commission may not withhold a money order tracking number under section 552.136 of the Government Code.

We note the submitted documents contain redacted and unredacted student information. The United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("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 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.⁵ *See* 34 C.F.R. 99.3 (defining "personally identifiable information"). Although the commission is not an educational authority, we understand the commission obtained the submitted student information in connection with its oversight of a career school. *See id.* § 99.33(a)(2). Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the submitted student information. Such determinations under FERPA must be made by the educational authority from which the education records were obtained.

Next, we address your exceptions to disclosure of the submitted information. 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

³Open Records Decision No. 684 is a previous determination authorizing all governmental bodies to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137, without the necessity of requesting an attorney general decision.

⁴We note the Texas legislature amended section 552.136, effective September 1, 2011, to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 27 (to be codified at Gov't Code § 552.136(d), (e)). Thus, the statutory amendments to section 552.136 of the Government Code superceded the previous determination granted under section 552.136 in Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information encompassed by section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

⁵A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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 [required 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 body 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.

(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.

Act of May 29, 2011, 82nd Leg., R.S., H.B. 2947, §§ 1, 2 (to be codified as an amendment to Gov’t Code § 552.116(a), (b)(1)). You contend the information submitted as Exhibit B1 consists of audit working papers protected by section 552.116. You state the commission obtained or created this information in connection with an investigation to determine whether a career school subject to the commission’s jurisdiction was in violation of the Education Code so as to be subject to the imposition of administrative penalties, including revocation of certification and imposition of sanctions. You state the commission’s final determinations are made available to the public. You explain the commission obtained or created the information at issue in the exercise of its responsibilities under chapter 132 of the Education Code to provide oversight of career schools and make final determinations regarding certification, re-certification, and investigations. *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). Based on your representations and our review of the information at issue, we find Exhibit B1 consists of audit working papers for purposes of

section 552.116(b)(2) of the Government Code. We therefore conclude the commission may withhold Exhibit B1 under section 552.116 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 132.024 of the Education Code, which the 82nd Legislature recently enacted. Section 132.024 provides as follows:

(a) In this section:

(1) “Student” means any prospective, current, or former student of:

(A) a career school or college; or

(B) any other school, educational institution, or business entity from which the commission receives, or regarding which the commission reviews, information through its administration or enforcement of [chapter 132 of the Education Code].

(2) “Student information” means identifying information in the commission’s possession regarding a student. The term includes:

(A) a student’s name, address, telephone number, social security number, e-mail address, or date of birth;

(B) any other identifying number or other information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the student; and

(C) a student’s education records, as defined by 34 C.F.R. Section 99.3.

(b) Student information is not public information for purposes of Chapter 552, Government Code.

(c) Unless permitted by Subchapter F, Chapter 301, Labor Code, or commission rule, a person commits an offense if the person solicits, discloses, receives, or uses, or authorizes, permits, participates in, or acquiesces in another person’s use of, student information.

(d) An offense under Subsection (c) is a Class A misdemeanor.

Act of May 23, 2011, 82nd Leg., R.S., H.B. 2538, § 1 (to be codified at Educ. Code § 132.024). We understand you to contend the information you have marked in Exhibit B2 is confidential under section 132.024(b). You indicate the marked information consists of information obtained by the career schools division of the commission from a career school subject to certification and oversight by the commission. You do not indicate the information at issue is subject to disclosure under subchapter F of chapter 301 of the Labor Code or commission rule. *See* Educ. Code § 132.024(c). Having reviewed the information at issue, we find the information we have marked constitutes student information protected by section 132.024(b). We therefore conclude the commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 132.024(b) of the Education Code. Although you have marked additional information you seek to withhold on this basis, we find you have not demonstrated the remaining information at issue constitutes “identifying information . . . regarding a student.” *See id.* § 132.024(a)(2). We therefore conclude the remaining information you have marked is not confidential under section 132.024(b) and may not be withheld on that basis under section 552.101.

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have concluded common-law privacy encompasses certain types of personal financial information. Financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Although you contend some of the submitted information is protected by common-law privacy, you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not a matter of legitimate public interest. We

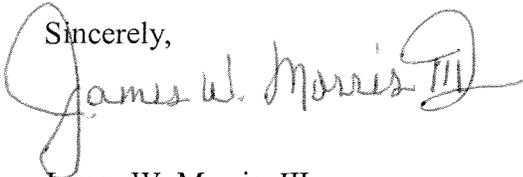
therefore conclude the commission may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the commission (1) may withhold Exhibit B1 under section 552.116 of the Government Code and (2) must withhold the information we have marked in Exhibit B2 under section 552.101 of the Government Code in conjunction with section 132.024(b) of the Education Code. The rest of the submitted information must be released. This ruling does not address the applicability of FERPA to the submitted information. Should the commission determine all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the commission must dispose of any such information in accordance with FERPA, rather than the Act.

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/em

Ref: ID# 432928

Enc: Submitted documents

c: Requestor
(w/o enclosures)