



November 27, 2001

Mr. Michael Jay Burns  
Supervising Attorney  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2001-5472

Dear Mr. Burns:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155411.

The Texas Workforce Commission (the "commission") received a request for the financial statements for "EES, Allied Health Careers School for the years 1998, 1999, and 2000" ("EES") and for names of certified public accountants for preparation of financial statements for schools. The commission takes no position as to whether the requested information relating to EES is excepted from disclosure. You believe, however, that the request for this information implicates the private party's interests. You notified EES of this request and of its right to submit arguments as to why the requested information should not be released.<sup>1</sup> You also submitted the information relating to EES to this office. As you have submitted no information that is responsive to the request for the names of accountants, we assume that the commission has released any responsive information that it holds or to which it has access. If not, then the commission must do so at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).*

We received comments from the private party, E.E.S. Educational Services, Inc., dba EES Allied Health Careers. EES asks that the "request be denied due to the personal and confidential nature of these documents that not only include my business affairs, but also personal matters." EES has not demonstrated, however, that any of the submitted information is considered to be confidential by law. *See Gov't Code § 552.101; see also*

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<sup>1</sup>*See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Gov't Code ch. 552 in certain circumstances).*

Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (information made confidential by statute), 611 at 1 (1992) (common law privacy). Therefore, EES has not shown that any of the information at issue is excepted from disclosure.<sup>2</sup>

We note, however, that the submitted documents contain account number information. The Seventy-seventh Legislature added section 552.136 to chapter 552 of the Government Code.<sup>3</sup> This newly enacted exception to public disclosure makes certain account number information confidential. Senate Bill 694 was passed on May 14, 2001, became effective when it was signed by the Governor on May 26, 2001, and provides in relevant part:

Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

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<sup>2</sup>We note that common law privacy protects the rights of individuals, not those of corporate entities. A corporate entity has no right of privacy. See *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co., Inc.*, 777 S.W.2d 434, 436 (Tex. App.--Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)); see also Open Records Decisions No. 620 at 3-4 (1993), 192 at 4 (1978).

<sup>3</sup>The Legislature also enacted two other bills that add a section 552.136 to chapter 552. House Bill 2589 makes certain e-mail addresses confidential. See Act of May 22, 2001, 77th Leg., R.S., ch. 545, § 5, 2001 Tex. Sess. Law Serv. 974, 975 (Vernon) (to be codified as Gov't Code § 552.136). Senate Bill 15 makes information maintained by family violence shelter centers confidential. See Act of May 3, 2001, 77th Leg., R.S., ch. 143, § 1, 2001 Tex. Sess. Law Serv. 279 (Vernon) (to be codified as Gov't Code § 552.136). Senate Bill 694 also enacted the same language as House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code. See Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Sess. Law Serv. 614 (Vernon) (to be codified as Gov't Code § 552.137).

Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Sess. Law Serv. 614 (Vernon) (to be codified as Gov't Code § 552.136). We have marked the account number information that the commission must withhold under section 552.136 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

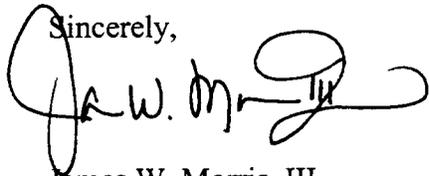
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "W".

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

JWM/sdk

Ref: ID# 155411

Enc: Marked documents

c: Ms. Jody Hawk  
c/o Mr. Michael Jay Burns  
Supervising Attorney  
Texas Workforce Commission  
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(w/o enclosures)

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(w/o enclosures)