



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 1, 2010

Mr. Robert N. Jones, Jr.
Assistant General Counsel
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2010-01526

Dear Mr. Jones:

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# 368844 (TWC Tracking No. 091105-019).

The Texas Workforce Commission (the "commission") received a request for information pertaining to Axis Business Academy, Inc. ("Axis"). You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.130, 552.136, and 552.147 of the Government Code. You also state that release of this information may implicate the proprietary interests of Axis. Accordingly, you state, and provide documentation showing, you notified Axis of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, this office has not received comments from Axis explaining why its submitted information should not be released.

Therefore, we have no basis to conclude that Axis has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the commission may not withhold any portion of the submitted information based upon the proprietary interests of Axis.

We note that you have submitted unredacted education records for our review, which you seek to withhold under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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.¹ *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). Although the commission is not an education authority, you inform us that the commission obtained the education records at issue during the course of its investigation. Because our office is prohibited from reviewing the education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the submitted records.² Such determinations under FERPA must be made by the educational authority from which the education records were obtained. Thus, the commission must contact the educational institution from which the education records at issue were obtained, as well as the DOE, regarding the applicability of FERPA to the education records.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that personal financial information not relating to the financial

¹A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²As our ruling is dispositive with regard to this information, we need not address your argument under section 552.147 of the Government Code for portions of this information.

transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). We note that common-law privacy protects the interests of individuals, not those of corporate and other business entities. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950) (cited in *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App—Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)) (corporation has no right to privacy).

Upon review, we find that the personal financial information of individuals that we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the commission must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information the commission marked pertains to a corporation, not an individual. Therefore, the commission has failed to demonstrate the applicability of common-law privacy to the remaining marked information. Accordingly, the commission may not withhold any portion of the remaining information it has marked under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review of the remaining information, we find that the information the commission has marked consists of vehicle identification numbers and Texas license plate numbers that must be withheld pursuant to section 552.130 of the Government Code.

Section 552.136 of the Government Code states that "[n]otwithstanding 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." *Id.* § 552.136. Accordingly, we find that the commission must withhold the bank account and routing numbers we have marked under section 552.136 of the Government Code. You have failed to demonstrate, however, how the check number you have marked constitutes an access device number for purposes of section 552.136. Accordingly, this information may not be withheld under section 552.136 of the Government Code.

Next, you seek to withhold portions of the remaining information under section 552.147 of the Government Code. This section provides that "[t]he social security number of a living

person is excepted from” required public disclosure under the Act.³ *Id.* § 552.147(a). Accordingly, the department may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the commission must contact the educational institution from which the education records at issue were obtained, as well as the DOE, regarding the applicability of FERPA to the submitted education records. The commission must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The commission must withhold the information you have marked under section 552.130 of the Government Code and the information we have marked under section 552.136 of the Government Code.⁴ The commission may withhold the information you have marked under section 552.147 of the Government Code. The remaining information must be released.

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 Luttrall
Assistant Attorney General
Open Records Division

JL/dls

³We note that 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 under the Act. Gov’t Code § 552.147(b).

⁴We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code and bank account and routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 368844

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)