



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2012

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

OR2012-00761

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# 442569 (TWC Tracking No. 111025-044).

The Texas Workforce Commission (the "commission") received a request for twenty categories of information regarding specified investigation findings and violations pertaining to the requestor's client, a named career school. You state the commission will withhold certain information pursuant to Open Records Decision No. 684 (2009).¹ You claim the remaining requested 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 submitted representative sample of information.²

Initially, we note the submitted documents contain redacted and unredacted student information. The United States Department of Education Family Policy Compliance Office

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

²We 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.

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.³ *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 note some of the requested information was the subject of a previous request for a ruling, in response to which this office issued Open Records Letter No. 2011-17431 (2011). In this prior ruling, we ruled the commission may withhold the information at issue under section 552.116 of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the commission may rely on Open Records Letter No. 2011-17431 as a previous determination and withhold the information previously ruled on in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we must address the commission’s obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov’t Code § 552.301(e). In this instance, you state the commission received the request for information on October 25, 2011.⁴ You did not, however, submit comments explaining why your stated

³A 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>.

⁴You inform our office the commission was closed for business on November 11, 2011.

exceptions apply or a copy of the information requested until November 23, 2011. Thus, we find the commission failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you assert the requested information is excepted under section 552.116 of the Government Code, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the information at issue may be withheld under section 552.116 of the Government Code. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the information at issue.

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 protected by other statutes, such as section 132.024 of the Education Code, which the 82nd Legislature recently enacted. Section 132.024 provides:

(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.

Educ. Code § 132.024 (footnote omitted). You indicate some of the remaining information is excepted from disclosure under section 132.024(b). You state the information was 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 id.* § 132.024(c). Based on your representations and our review, the submitted information contains student information protected by section 132.024(b). Therefore, to the extent the information at issue contains student information, the commission must withhold that information under section 552.101 of the Government Code in conjunction with section 132.024(b) of the Education Code. As you have not claimed any other exceptions to disclosure, the commission must release the remaining information.

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,

A handwritten signature in black ink, appearing to read 'Lauren E. Kleine', written in a cursive style.

Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/em

Ref: ID# 442569

Enc. Submitted documents

c: Requestor
(w/o enclosures)