



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2012

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

OR2012-04019

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# 448048 (TWC Tracking No. 111205-023).

The Texas Workforce Commission (the "commission") received a request for twenty-four categories of information pertaining to American Commercial College over a specified time period.<sup>1</sup> 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>2</sup> You claim the submitted information is excepted from disclosure under

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<sup>1</sup>You inform us the commission provided the requestor with an estimate of charges and a request for a deposit for payment of those charges on December 19, 2011. *See* Gov't Code §§ 552.2615, .263(a). You state the commission received a deposit for payment of the anticipated costs on January 6, 2012. Thus, January 22, 2012 is the date on which the commission is deemed to have received the request. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date that the governmental body receives deposit or bond).

<sup>2</sup>Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision. 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).

sections 552.101, 552.102, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, you state the commission requested clarification of one of the specified categories listed in the request. *See Gov't Code § 552.222* (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so request may be properly narrowed). You state the commission has not received clarification of that portion of the request. Thus, for the portion of the requested information for which you have sought but not received clarification, we find the commission is not required to release information in response to that portion of the request. However, if the requestor clarifies that portion of the request for information, the commission must seek a ruling from this office before withholding any responsive information from the requestor. *See City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Next, we note the submitted documents contain 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.<sup>4</sup> *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. However, we will address the applicability of the claimed exceptions to the information at issue.

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<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 that those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>A 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>.

You assert portions of Exhibit B-2 are subject to section 552.102(a) of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, 354 S.W.3d 336, 348 (Tex. 2010). You claim the birth dates you have marked in Exhibit B-2 are subject to section 552.102(a). However, *Texas Comptroller* applies only to a public employee’s birth date maintained by the employer in an employment context. In this instance, the information at issue is related to a private entity. Because these records do not constitute personnel records of a government employee, the commission may not withhold the dates of birth marked in Exhibit B-2.

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 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.

Gov't Code § 552.116. You contend Exhibit B-1 consists of audit working papers that were compiled by the commission during the course of investigations into and oversight of a career school 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 the commission's jurisdiction and control). You state the commission's final determinations are made available to the public. 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 Exhibit B-1 under section 552.116.<sup>5</sup>

In summary, the commission may withhold Exhibit B-1 under section 552.116 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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/som

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<sup>5</sup>As our ruling on Exhibit B-1 is dispositive, we do not address your remaining arguments against its disclosure.

Ref: ID# 448048

Enc. Submitted documents

c: Requestor  
(w/o enclosures)