



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

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

OR2012-14123

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# 464612 (TWC Tracking No. 120619-013).

The Texas Workforce Commission (the "commission") received a request for financial information pertaining to RGV Careers over a specified time period. You state the commission will withhold information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.116 of the Government Code. You also state that release of the submitted information may implicate the interests of a third party, Lan-Rod Investments ("Lan-Rod"), which you have notified of the request 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 representative sample of information.

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, we have not received comments from Lan-Rod explaining why any portion of the submitted information should not be released. Therefore, we have no basis to conclude Lan-Rod has any protected proprietary interest in the information at issue. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999)

¹Open 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.

(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. Consequently, the commission may not withhold any portion of the requested information on the basis of any proprietary interest Lan-Rod may have in the 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 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.

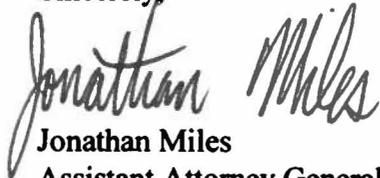
Gov't Code § 552.116. You contend the submitted information consists of audit working papers that were compiled by the commission during the course of an investigation of a career school subject to the jurisdiction of the commission, as authorized under sections 132.021 and 132.058 of the Education Code. *See* Educ. Code §§ 132.021, .058 (authorizing the commission to revoke or place conditions on 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 submitted information constitutes audit working papers under section 552.116. Accordingly, the commission may withhold the submitted information under section 552.116 of the Government Code.²

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/bhf

Ref: ID# 464612

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Anabelle Rodriguez
Lan-Rod Investments
1200 West Polk Avenue, Suites P & Q
Pharr, Texas 78577
(w/o enclosures)

²As our ruling is dispositive, we do not address your remaining arguments against disclosure of the submitted information.