



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

January 8, 2004

Ms. Sandra Smith  
Executive Director  
Texas Board of Chiropractic Examiners  
333 Guadalupe, Suite 3-825  
Austin, Texas 78701-3942

OR2004-0165

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193934.

The Texas Board of Chiropractic Examiners (the "board") received a request for information relating to a named chiropractor. You inform us that the board is releasing some of the requested information. You seek to withhold the rest of the requested information under sections 552.026, 552.101, and 552.102 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. We have considered your arguments and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You contend that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides:

[t]his chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" are those records, files, documents, and other materials which

- (i) contain information directly related to a student; and
- (ii) are *maintained by an educational agency or institution* or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A) (emphasis added). We note that the board is not an educational agency or institution attended by students. Consequently, the information that you seek to withhold is not an "education record" as defined by FERPA. *See* Open Records Decision No. 390 (1983). Accordingly, we conclude that FERPA is not applicable to the submitted information, and it may not be withheld from the requestor on that basis.

We note, however, that the submitted information contains the named chiropractor's social security number. Section 56.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. The board appears to have obtained the chiropractor's social security number in connection with the issuance of a professional license. We therefore conclude that the board must withhold the social security number that we have marked under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code as information made confidential by law.

You also raise section 552.102 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[.]" This exception is applicable only to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). Section 552.102(b) excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" You do not indicate that the submitted transcripts are those of a public official or employee, for purposes of section 552.102(a), or a professional public school employee,

for purposes of section 552.102(b). Thus, you have not demonstrated that any of the submitted information is excepted from disclosure under section 552.102.

In summary, the board must withhold the chiropractor's social security number under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. The board must release the rest of the submitted information.

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).

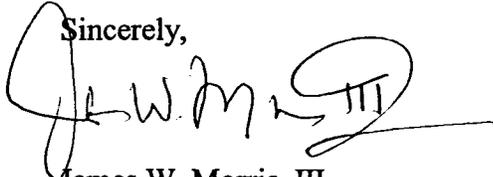
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Texas 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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", with a long horizontal flourish extending to the right.

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

JWM/sdk

Ref: ID# 193934

Enc: Submitted documents

c: Mr. Mel Miller  
Shawver & Associates  
6262 Weber, Suite 112  
Corpus Christi, Texas 78413  
(w/o enclosures)