



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 9, 2004

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

OR2004-2882

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# 199086.

The Texas Board of Chiropractic Examiners (the "board") received a request for all files pertaining to a named chiropractor. The board has released most of the requested information but asserts the submitted college transcripts are excepted from public disclosure under sections 552.026, 552.101, 552.102, and 552.114 of the Government Code, and the 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 reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. 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 enumerated 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" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). The board is not an educational agency or institution.

However, FERPA provides that an educational agency or institution may only transfer personal information to a third party "on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student." *Id.* § 1232g(b)(4)(B). The federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. 34 C.F.R. § 99.33(a)(2). Here, it appears that the board received the submitted transcripts from three educational institutions. If so, pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2), the board may only release these transcripts upon consent of the named chiropractor. If the board did not receive the transcripts from these educational institutions, then it may not withhold these transcripts under FERPA.

You also assert section 552.102 of the Government Code in regard to the submitted information. 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, and the information may not be withheld on this basis.

We next note that the transcripts contain the chiropractor's social security number. Section 58.001 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 § 58.001. Accordingly, we find that the licensee's social security number is confidential under section 58.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

In summary, we conclude that in the event the board received the submitted transcripts from an educational institution, then, pursuant to FERPA, the board may only release the transcripts upon consent of the licensee. If the board did not receive the transcripts from the colleges at issue, then the board may not withhold the submitted transcripts under FERPA.

In the event the transcripts are not confidential under FERPA, the board must withhold the licensee's social security number contained in the transcripts under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code, but must release the remaining 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).

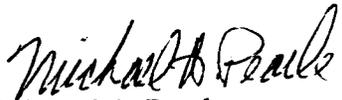
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. 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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 199086

Enc. Submitted documents

c: Ms. Phyllis Michaels
Kassabian, Doyle & Weatherford
1521 N. Cooper Street
Arlington, Texas 76016
(w/o enclosures)