



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 14, 2004

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

OR2004-3982

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# 201585.

The Texas Board of Chiropractic Examiners (the "board") received a request for information relating to a named chiropractor and a specified facility. You state that portions of the responsive information will be released but indicate that some of the requested information does not exist. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that portions of the submitted information are excepted from disclosure under sections 552.026, 552.114, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the submitted college transcripts are excepted from disclosure under sections 552.026 and 552.114 of the Government Code. Section 552.026 provides as follows:

This 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. The Family Educational Rights and Privacy Act of 1974 ("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). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). We note that 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 transcripts from 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 educational institutions, then it may not withhold these transcripts under FERPA.

In the event that the submitted transcripts may not be withheld under FERPA, we note that the transcripts contain the named chiropractor's social security number. The submitted facility application form also contains this social security number, which you have marked. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes. 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 marked 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.

You assert that the marked e-mail address is excepted from disclosure under section 552.137 of the Government Code, which provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. We find that the marked e-mail address is excepted from disclosure under section 552.137(a). Accordingly, we conclude that, unless consent to release has been granted, the board must withhold this e-mail address pursuant to section 552.137(a).

You also assert that a portion of the submitted information is subject to section 552.130 of the Government Code. Section 552.130 excepts information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. The board must withhold the Texas driver's license number you have marked under section 552.130.

In summary, if the board received the submitted transcripts from educational institutions, the board may only release these transcripts upon consent of the named chiropractor. The board must withhold the marked social security number under section 552.101 in conjunction with section 58.001 of the Occupations Code. The board must withhold the marked driver's license number under section 552.130. The board must withhold the marked e-mail address under section 552.137 unless consent to release has been granted. The remaining submitted information must be released.

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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 201585

Enc. Submitted documents

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(w/o enclosures)