



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2004

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

OR2004-4483

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# 202639.

The Texas Board of Chiropractic Examiners (the "board") received a request for the professional file and board orders pertaining to a specified chiropractor. You state that the board is providing the requestor with some of the requested information. You claim, however, that portions of the remaining requested information are excepted from disclosure pursuant to sections 552.026, 552.114, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note that section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes. 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.¹ See 20 U.S.C. § 1232g(b)(1). "Education

¹ Section 552.026 of the Government Code provides that "[t]his chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]." Gov't Code § 552.026. Section 552.114 of the Government Code excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Gov't Code § 552.114. This office generally applies the same analysis under section 552.114 and FERPA. See Open Records Decision No.

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. *See id.* § 1232g(a)(4)(A). We note, however, 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. *See* 34 C.F.R. § 99.33(a)(2). Here, it appears that the board received the transcripts that you submitted to us as Exhibit B 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. However, to the extent that the board did not receive these transcripts from these educational institutions, then it may not withhold the transcripts under FERPA.

We note, however, that the submitted transcripts contain the named chiropractor’s social security number. Section 58.001 of the Occupations Code provides:

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. It appears that the board obtained the chiropractor’s social security number in connection with the issuance of a professional license. Accordingly, we conclude that the social security number contained within Exhibit B is confidential under section 58.001 of the Occupations Code and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

We also note that section 552.101 encompasses the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. In addition, this office has found that the following types of information are protected from disclosure by the common-law right to

privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Based on our review of the submitted information, we have marked the information that the board must withhold pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You claim that a portion of the submitted information is excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Based on your arguments and our review of the submitted information at issue, we have marked the information that the board must withhold pursuant to section 552.136 of the Government Code.

In summary, if the board received the submitted transcripts from educational institutions, the board may only release them upon consent of the named chiropractor pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2). However, to the extent that the board did not receive the transcripts from educational institutions, then it may not withhold them under FERPA. The board must withhold the social security numbers contained within Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code. The board must also withhold the information that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy and section 552.136 of the Government Code. The board must release the remaining submitted information to the requestor.

You request that we issue the board a previous determination that would allow it to withhold "information established by section 552.136" in response to future requests for such information without the necessity of seeking a decision from us as to the public availability of the information. We decline to issue such a previous determination at this time.

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).

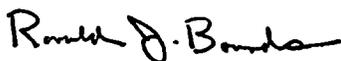
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 202639

Enc. Marked documents

c: Ms. Dee Shedd
One Cedro Place
Dallas, Texas 75230
(w/o enclosures)