ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2004

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

OR2004-6108

Dear Ms. Smith:

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# 205859.

The Texas Board of Chiropractic Examiners (the "board") received a request for five categories of information related to a named chiropractor and a specified facility, excluding social security numbers, e-mail addresses, and account numbers. You state that some responsive information has been provided to the requestor. You claim that some of the remaining requested information is excepted from disclosure under sections 552.026, 552.114, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert the submitted educational records of the named chiropractor are subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, as well as sections 552.026 and 552.114 of the Government Code. 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 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.

Section 552.114 of the Government Code excepts from public disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis to section 552.114 as to FERPA. *See* Open Records Decision No. 539 (1990). 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 that (1) contain information directly related to a student and (2) 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). We note that the board is not an educational agency or institution attended by students; 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). The board states it received the transcripts directly from the educational institutions. Thus, 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.

You also assert the driver's license numbers that you have marked are excepted from release under section 552.130 of the Government Code. Section 552.130(a)(1) excepts from disclosure information relating to a driver's license issued by a Texas agency; therefore, you must withhold the marked Texas driver's license numbers under section 552.130.

To conclude, (1) the educational records can be released only in accordance with FERPA, and (2) the marked driver's license numbers are excepted from release under section 552.130 of the Government Code. The remaining submitted information must be released to the requestor.

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,

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 205859
Enc. Submitted documents

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