



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2004

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

OR2004-8359

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# 210383.

The Texas Board of Chiropractic Examiners (the "board") received a request for information relating to Dr. Paul E. Strube. You inform us that the board is releasing some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. 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).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.

¹Section 552.026 incorporates FERPA into the Public Information Act (the "Act"), chapter 552 of the Government Code. *See* Gov't Code § 552.026.

FERPA provides, however, 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).

You inform us that the submitted educational transcripts were received directly from the educational institutions. Based on your representation, we conclude that pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2), the board may only release the transcripts, which we have marked, upon consent of Dr. Strube.²

Section 552.101 also incorporates section 58.001 of the Occupations Code, which 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. The remaining information in Exhibit A includes Dr. Strube’s social security number. The board must withhold his social security number under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code.

You contend that the information submitted as Exhibit C is confidential under section 201.206 of the Occupations Code. This section provides in part:

(a) The board’s investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

....

(d) Notwithstanding Subsection (a), the board may:

(1) disclose a complaint to the affected license holder; and

(2) provide to a complainant the license holder’s response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

²As our determination under FERPA is dispositive, we need not address section 552.114.

Occ. Code § 201.206(a), (d). Section 201.206 was added to the Occupations Code by the Seventy-eighth Legislature and applies to “a complaint or investigation pending on [September 1, 2003] or filed on or after that date.” Act of May 29, 2003, 78th Leg., R.S., ch. 329, § 7(b), 2003 Tex. Gen. Laws 1405, 1407. We find that the information submitted as Exhibit C consists of an investigation file that comes within the scope of section 201.206 of the Occupations Code. We therefore agree that the board must withhold Exhibit C in its entirety under section 552.101 of the Government Code.

Section 552.130 excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). We agree that the board must withhold Dr. Strube’s Texas driver’s license number, which appears in Exhibit B, under section 552.130.

In summary: (1) the educational transcripts may only be released upon Dr. Strube’s consent, as provided by section 1232g(b)(4)(B) of title 20 of the United States Code and section 99.33(a)(2) of title 34 of the Code of Federal Regulations; (2) the social security number must be withheld under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code; (3) Exhibit C must be withheld under section 552.101 in conjunction with section 201.206 of the Occupations Code; and (4) the Texas driver’s license number must be withheld under section 552.130. The rest of the 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

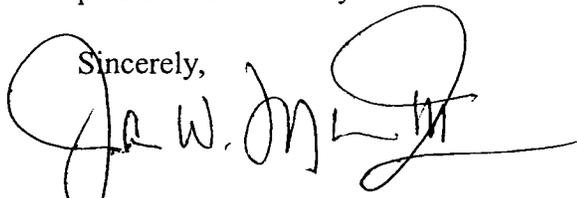
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending to the right.

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

JWM/sdk

Ref: ID# 210383

Enc: Submitted documents

c: Mr. Clay Hinds
Hinds & Willett
510 West Main
Waxahachie, Texas 75165
(w/o enclosures)