



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 23, 2005

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

OR2005-02495

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# 221042.

The Texas Board of Chiropractic Examiners (the "board") received a request for information pertaining to a named chiropractor, including his licensed facilities and complaints filed against him, as well as all radiologic registrations filed with the board. You state that some of the requested information is being provided to the requestor, but claim that some of the submitted information is excepted from disclosure under sections 552.026, 552.101, 552.114, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim 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 the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 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. *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 receiving 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). You state that the transcripts in Exhibit A are original college transcripts provided to the board by the educational institutions. Based on your representation, we conclude that the board may only release the transcripts upon consent of the chiropractor pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2).

Section 552.101 also encompasses section 58.001 of the Occupations Code. Under this section, 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 § 58.001.¹ We note that the submitted license application and the facility application forms include applicant social security numbers. These social security numbers, which we have marked, are confidential under section 58.001 of the Occupations Code, and thus must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *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. *Id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common law privacy: 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); personal financial information not relating to the financial transaction between an individual

¹There are currently two different sections of the Occupations Code denominated as section 58.001. The section relating to “[t]he 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” was renumbered from section 56.001 of the Occupations Code to section 58.001 of the Occupations Code by the Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.

and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). This office generally concludes that ownership percentages reflect personal financial information; however, where an individual holds a one hundred percent interest in a business, the information simply reflects that the individual owns his own business. Thus, we find that this information is not highly intimate or embarrassing for purposes of the common law right to privacy, and the board may not withhold it under section 552.101 on that ground.

You also contend that the motor vehicle information in the remaining information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part the following:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. We note that section 552.130 does not except out-of-state license plate numbers. The board must withhold the Texas motor vehicle record information we have marked under section 552.130.

Finally, the board asserts that some of the remaining information is excepted under section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. None of the e-mail addresses at issue appears to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the board must withhold the e-mail addresses we have marked under section 552.137.

To conclude, the board may only release the college transcripts in Exhibit A upon consent of the chiropractor pursuant to FERPA. The board must withhold (1) under section 552.101 the marked social security numbers that are confidential under section 58.001 of the

Occupations Code, (2) the marked Texas motor vehicle record information under section 552.130, and (3) the marked e-mail addresses under section 552.137. The board must release the remaining information at issue.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

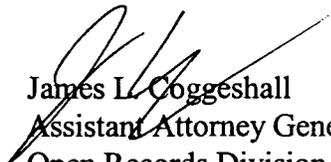
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 221042

Enc. Submitted documents

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