



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 11, 2005

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

OR2005-03081

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# 224804.

The Texas Board of Chiropractic Examiners (the "board") received a request for the professional file of a named chiropractor. You inform us that the board is releasing some information but claim that other requested information is excepted from disclosure under sections 552.026, 552.114, and 552.136 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" and encompasses information protected 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. *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. 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).

In this instance, you indicate that the records at issue were “received directly from the educational institution (Parker College of Chiropractic, The University of Western Ontario, University of Alberta, and The University of Texas at Austin).” Because Canadian institutions would not receive funds from the United States federal government or the government of the State of Texas, the records from such institutions may not be withheld under section 552.101 in conjunction with FERPA or under section 552.114. However, Parker College of Chiropractic (“Parker”) and The University of Texas at Austin (“Texas”) are educational institutions located in the State of Texas. Based on your representation that the board received these records directly from an educational agency or institution, we find that the board may only release the Parker and Texas records on consent of the named chiropractor in accordance with sections 1232g(b)(4)(B) and 99.33(a)(2).

Additionally, the submitted information contains a debit card number. Section 552.136 of the Government Code states 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. The board must, therefore, withhold the marked debit card number under section 552.136.

In summary, the board may only release the Parker and Texas records on consent of the named chiropractor in accordance with federal laws and regulations. In addition, the marked access device number must be withheld pursuant to section 552.136. 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, 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); *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,



Kazzye W. Martens
Assistant Attorney General
Open Records Division

KWM/seg

Ref: ID#224804

Enc. Submitted documents

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(w/o enclosures)