ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 20, 2005

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

OR2005-03407

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# 222475.

The Texas Board of Chiropractic Examiners (the "board") received a request for all files concerning three named chiropractors and a facility. 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, 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" 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).

You inform us that "[t]hese transcripts are original transcripts received directly from the educational institution (Parker College of Chiropractic, Texas Chiropractic College, Dallas County Community College District, Ramapo College of New Jersey, and William Paterson University)." Based on your representation that the board received these transcripts directly from an educational agency or institution, we find that the board may only release these transcripts on consent of the named chiropractor in accordance with sections 1232g(b)(4)(B) and 99.33(a)(2).

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). The Texas driver's license number that you have marked must be withheld under section 552.130.

You also raise section 552.137 of the Government Code for a portion of the remaining submitted information. This section 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). We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. We have marked the e-mail address in the submitted documents that is within the scope of section 552.137(a). Unless the board has received affirmative consent to disclose the e-mail address we have marked, the board must withhold this e-mail address under section 552.137 of the Government Code. The remaining e-mail addresses you have marked, however, are general business e-mail addresses and may not be withheld under 552.137.

In summary, in accordance with 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, the submitted transcripts may only be released on consent of the named chiropractor. The board must withhold the marked Texas driver's license number under section 552.130 of the Government Code. The board must withhold the e-mail address we have marked under

section 552.137 of the Government Code, unless the board receives affirmative consent to release it. 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); *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,

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 222475

Enc. Submitted documents

c: Mr. David Kassabian
Kassabian, Doyle & Weatherford
1521 North Cooper Street, Suite 650, LB 21
Arlington, Texas 76011
(w/o enclosures)