



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2005

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

OR2005-07230

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# 230022.

The Texas Board of Chiropractic Examiners (the "board") received a request for the professional file of a named chiropractor. You state that you have released some requested information but claim that other information, which you have submitted for our review, is excepted from disclosure under sections 552.026, 552.114, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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). 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 (National College of Chiropractic, The University of Tennessee, Wayne County Community College, and Madonna College).” 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).¹

We note that the remaining submitted information contains a social security number of a chiropractor licensed by the board. Section 58.001 of the Occupations Code 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 § 58.001.² Pursuant to sections 552.101 and 58.001, the board must withhold the marked social security number.

Next, we address your claim under section 552.130 of the Government Code. This section exempts from disclosure information that relates to a driver’s license or motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130. Accordingly, the board must withhold the Texas driver’s license number that you have marked pursuant to section 552.130.

¹Because of our ruling on this issue, we need not address your arguments regarding section 552.114 of the Government Code.

²As of the date of this letter ruling, two different sections of the Occupations Code are 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.

Lastly, we address your claim under section 552.136 of the Government Code, which 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. You contend that information appearing on copies of money orders is excepted from disclosure on this basis. Upon review, however, we find that this information is not subject to section 552.136. We therefore conclude that the board may not withhold any of the submitted information pursuant to section 552.136.

To summarize, 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 licensee’s social security number that we have marked must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code. The Texas driver’s license number that you have marked must be withheld under section 552.130 of the Government Code. 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).

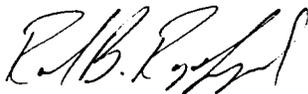
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 230022

Enc. Submitted documents

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