ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2005

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

OR2005-07613

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# 231026.

The Texas Board of Chiropractic Examiners (the "board") received three requests from the same requestor for information relating to two named chiropractors and a particular chiropractic facility. 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 552.101, 552.114, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from 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 federal 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

[1]Section 552.026 of the Government Code incorporates FERPA into the Act. *See* Gov't Code § 552.026.

a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). The board is not an educational agency or institution.

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 on the consent of the chiropractor to whom the transcripts pertain.[2]

You also raise section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code. Section 201.206 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.
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> . . .
>
> (d) Notwithstanding Subsection (a), the board may:
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> > (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.

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. You assert that some of the submitted information is contained in an investigation file that is confidential under section 201.206. We agree that the board must withhold that information under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code.

Section 552.101 also encompasses section 58.001 of the Occupations Code, which provides as follows:

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[2]As our determination under FERPA is dispositive, we do not address section 552.114.

> 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. To the extent that the submitted social security numbers are those of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by the board, they are confidential under section 58.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code.

We also note that under section 552.147 of the Government Code,[3] "[t]he social security number of a living person is excepted from" required public disclosure under the Act.[4] Therefore, to the extent that section 58.001 of the Occupations Code is not applicable to the submitted social security numbers, they must be withheld under section 552.147.

You also raise section 552.130. This section 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). Section 552.130 is applicable to Texas driver's license information. We agree that the Texas driver's license number that you have marked must be withheld under this exception. However, the board may not withhold the out-of-state driver's license number that you have marked under section 552.130.

Lastly, we address your claim under section 552.137, which states in part:

> (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
>
> (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137(a)-(b). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses

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[3]Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

[4]We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

listed in section 552.137(c) may not be withheld under this exception. Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees.

We agree that the e-mail address of a chiropractor that you have marked is confidential under section 552.137. The board must withhold that e-mail address unless the chiropractor has affirmatively consented to its public disclosure. However, the other e-mail address that you have marked is that of a business. The board may not withhold that e-mail address under section 552.137.

In summary: (1) pursuant to section 1232g(b)(4)(B) of FERPA and section 99.33(a)(2) of title 34 of the Code of Federal Regulations, the board may only release the educational transcripts on the consent of the chiropractor to whom the transcripts pertain; (2) the board must withhold the investigative information under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code; (3) the social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by the board must be withheld under section 552.101 in conjunction with section 58.001 of the Occupations Code; (4) to the extent that section 58.001 is not applicable, the submitted social security numbers must be withheld under section 552.147 of the Government Code; (5) the board must withhold the Texas driver's license number under section 552.130; and (6) the chiropractor's e-mail address must be withheld under section 552.137 unless he has consented to its disclosure. The board must release the rest of the submitted information.

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

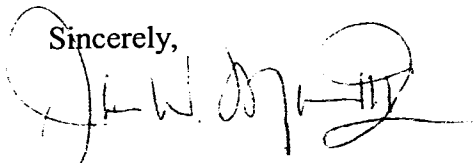
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 231026

Enc: Submitted documents

c: Mr. Brent J. Walker
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