



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 12, 2005

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

OR2005-08271

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# 231950.

The Texas State Board of Chiropractic Examiners (the "board") received a request for all files related to a named chiropractor. You state that you have already provided to the requestor all responsive records you do not claim are excepted from disclosure. You claim that the submitted 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 reviewed the submitted information.

You claim that Exhibit A is confidential under section 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Gov't Code § 552.114. This office generally applies the same analysis under section 552.114 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"). See Open Records Decision No. 539 (1990). 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).

We note that the board is not an educational agency or institution. However, FERPA also contains provisions governing access to information in education records transferred by an educational agency or institution to a third party. 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). 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 state that the board received the submitted transcripts in Exhibit A from the educational institutions. Accordingly, pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2), we determine that the board may only release the transcripts in Exhibit A upon consent of the named chiropractor.

You assert an insurance claim number in the submitted information is excepted under section 552.101 of the Government Code. Section 552.101 excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This provision encompasses the doctrine of common law which 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 545 at 4 (1990) (“In general, we have found the kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding the receipt of governmental funds or debts owed to governmental entities.”), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Upon review of the submitted information, we agree that the marked claim number is protected by common-law privacy and must be withheld pursuant to section 552.101.

The submitted information includes a Texas driver’s license number. Section 552.130 of the Government Code 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 [or] a motor vehicle title or registration issued by an agency of this state.” Gov’t Code § 552.130. In accordance with section 552.130, the board must withhold the Texas driver’s license number marked in the submitted information.

The submitted information also includes e-mail addresses that are 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). We note that subsection (c) specifically excludes an e-mail address “provided to a governmental body on a letterhead.” *Id.* at § 552.137(c)(4). Further, 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. Section 552.137 also does not apply to website addresses. *See id.* We have marked e-mail addresses in the submitted information that are not of a type specifically excluded by section 552.137(c). Therefore, the board must withhold these marked e-mail addresses in accordance with section 552.137 unless the board receives consent for their release.

The submitted information also includes a social security number that is excepted under section 552.147 of the Government Code.<sup>1</sup> Section 552.147<sup>2</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the board must withhold the social security number contained in the submitted information under section 552.147.<sup>3</sup>

In summary, the board may only release the transcripts in Exhibit A upon consent of the named chiropractor. The marked claim number must be withheld under section 552.101 in conjunction with common law privacy. The board must withhold the marked Texas driver’s license number pursuant to section 552.130. The board must withhold the marked e-mail addresses under section 552.137 unless the board receives consent for their release. The board must withhold the marked social security number under section 552.147. 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>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).

<sup>3</sup>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.

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 Office of the Attorney General 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. 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,



Ramsey Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 231950

Enc. Submitted documents

c: Mr. Paul Warren  
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(w/o enclosures)