



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

October 19, 2005

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

OR2005-09484

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# 234625.

The Texas State Board of Chiropractic Examiners (the "board") received a request for a specified complaint case pertaining to a named chiropractor. You state you have released some information but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute. Section 201.402 of the Occupations Code provides in relevant part:

(a) Communications between a chiropractor and a patient relating to or in connection with any professional services provided by a chiropractor to the patient are confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential

and privileged and may not be disclosed except as provided by this subchapter.

Occ. Code § 201.402(a), (b). The majority of the submitted information consists of records of the identity, diagnosis, evaluation, or treatment of a patient by the named chiropractor maintained by that chiropractor. Thus, section 201.402(b) makes these chiropractor records confidential. Chapter 201 of the Occupations Code includes exceptions to this confidentiality provision. *See id.* §§ 201.403, .404, .405. As such, unless otherwise authorized to release this information under section 201.403, 201.404, or 201.405 of the Occupations Code, the board must withhold these chiropractor records, which we have marked, pursuant to section 552.101 of the Government Code in conjunction with section 201.402(b) of the Occupations Code.

The remaining information you claim is confidential under subsections 201.402(a) and (b) consists of three letters to and from the board. We find that these letters are not confidential pursuant to sections 201.402(a) or 201.402(b) of the Occupations Code. Accordingly, these letters may not be withheld under section 552.101 of the Government Code on that basis.

However, section 552.101 of the Government Code also encompasses the doctrine of common law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In our opinion, the common-law right to privacy protects from public disclosure a patient's choice of a physician. Here, the request is for information concerning a named chiropractor. Thus, revealing any identifying information about the named chiropractor's patients would necessarily reveal those patients chose the named chiropractor to treat them. Accordingly, in this case, we find that the identity of the chiropractic patient named in the remaining information is private. We have marked the information in the remaining letters that must be withheld under section 552.101 in conjunction with the common-law right to privacy.

In summary, the board must withhold the marked chiropractor records pursuant to section 552.101 of the Government Code in conjunction with section 201.402(b) of the

Occupations Code. The board must withhold the marked identifying information of the named patient pursuant to section 552.101 in conjunction with common-law privacy. 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 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,

A handwritten signature in black ink that reads "Ramsey Abarca". The signature is written in a cursive style with a large initial "R".

Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/krl

Ref: ID# 234625

Enc. Submitted documents

c: Ms. Candayce Cargile  
900 Jackson Street # 700  
Dallas, Texas 75202  
(w/o enclosures)