



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2009

Mr. Dan Meador
Assistant General Counsel
Texas Department of State Health Services
P.O. Box 149347
Austin, Texas 78714-9347

OR2009-07679

Dear Mr. Meador:

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# 344992 (DSHS File No. 014786-N/A-2009).

The Texas Department of State Health Services (the "department") received a request for information pertaining to a specified licensed professional counselor. You state the department has or will release some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you seek to withhold the submitted university transcripts as education records under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, which governs the availability of education records held by educational institutions or agencies receiving federal funds. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the

Act.¹ Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”).

We note that the department, which maintains the information at issue, is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth is not an “educational agency” within FERPA). However, you indicate the university transcripts at issue were transferred directly to the department from the educational agencies. FERPA contains provisions that govern access to education records that were transferred by an educational agency or institution to a third party. Therefore, we will not address the applicability of FERPA to the transcripts, because our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. Such determinations under FERPA must be made by the educational authorities from which education records were obtained. Thus, the department must contact the educational institutions from which the transcripts were obtained, as well as the DOE, regarding the applicability of FERPA to the transcripts.

Section 552.101 of the Government Code exempts 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 other statutes make confidential, such as section 59.001 of the Occupations Code.² Section 59.001 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 § 59.001. You state that the social security numbers contained in the submitted information were obtained in connection with the issuance of an occupational or professional license. Based on this representation, we conclude that the social security numbers you have marked are confidential under section 59.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. However, the remaining information you have marked under section 59.001 does not consist of social security

¹A copy of this letter may be found on the Office of the Attorney General’s website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

²Although you raise section 56.001 of the Occupations Code, we understand you to raise section 59.001 of the Occupations Code. Section 56.001 of the Occupations Code was renumbered 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. Section 58.001 was renumbered to section 59.001 of the Occupations Code by the Act of May 25, 2005, 79th Leg., R.S., H.B. 2018, § 23.001(68).

numbers. Thus, this information, which we have marked for release, may not be withheld under section 552.101 on that basis.

You assert the "Promissor ID" number you have marked in the remaining information is confidential under section 552.136(b) 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. An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *Id.* § 552.136(a). You state this number is a "password ID for entrance to the Licensed Professional Counselors exam." Upon review of your arguments and the information at issue, we find that you have failed to demonstrate this information constitutes access device numbers used to obtain money, goods, services, or another thing of value or initiate a transfer of funds other than a transfer originated solely by paper instrument. We therefore conclude the department may not withhold the information you have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). 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. The e-mail address you have marked is maintained by a governmental body for its employee and may not be withheld under section 552.137 of the Government Code.

In summary, the department must contact the educational institutions from which the transcripts were obtained, as well as the DOE, regarding the applicability of FERPA to the transcripts. With the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 59.001 of the Occupations Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Luttrall".

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 344992

Enc. Submitted documents

c: Requestor
(w/o enclosures)