



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 21, 2010

Mr. Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2010-10867

Dear Mr. Parker:

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# 387429.

The Texas Board of Chiropractic Examiners (the "board") received a request for certain medical records pertaining to the requestor. You 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. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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 section encompasses information made confidential by other statutes including chapter 201 of the Occupations Code. Section 201.206 of the Occupations Code 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.

(d) Notwithstanding Subsection (a), the board may:

- (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). You inform us section 201.206 applies to "all investigations pending or opened on or after September 1, 2003." We understand that the submitted information is contained in an investigation file of a complaint about a chiropractor licensed by the board that is maintained by the board pursuant to section 201.204 of the Occupations Code. *See id.* § 201.204 (setting forth the board's record keeping requirements with respect to complaints filed with the board). You assert that the submitted information is confidential under section 201.206. You do not inform us the requestor is entitled to any of the submitted information pursuant to section 201.206(d)(2). Thus, based on your representations and our review of the information at issue, we agree the submitted information is generally confidential under section 201.206(a) of the Occupations Code.

We note the submitted information, while generally confidential under section 201.206(a), contains the requestor's chiropractic records, the public availability of which is also governed by chapter 201 of the Occupations Code. Section 201.402 of the Occupations Code provides in part:

(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.

(c) A person who receives information from the confidential communications or records, excluding a person listed in Section 201.404(a) who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 201.402(b)-(c). Chapter 201 also includes provisions establishing exceptions to confidentiality and consent for release of information. *See id.* §§ 201.404, .405. Consent

for release of chiropractic records must specify: (1) the information records covered by the release; (2) the reason or purpose for the release; and (3) the person to whom the information is to be released. *See id.* § 201.405(c). Because a person may consent to the disclosure of his or her own records under the statute, the person has a right to his or her own records. *Id.* § 204.405; *cf. Hutchins v. Tex. Rehab. Comm'n*, 544 S.W.2d 802, 804 (Tex. Civ. App. — Austin 1976, no writ) (implying patient's right to inspect own records where statute allows patient to consent to disclosure); Tex Att'y Gen. ORD-613 (1993) at 3 (“[t]he subject's power to consent to release of the [Texas Racing C]ommission's investigatory file implicitly provides the subject a right of access to the file” under statute). We have marked the requestor's chiropractic records which are subject to chapter 201 of the Occupations Code.

Thus, although the information at issue is generally confidential under section 201.206(a) of the Occupations Code, sections 201.404 and 201.405 of the Occupations Code may provide the requestor with a right of access to his own chiropractic records. Therefore, there is a conflict between the provisions of section 201.206(a) of the Occupations Code and sections 201.404 and 201.405 of the Occupations Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See Gov't Code* § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 201.206(a) of the Occupations Code generally makes confidential investigation records relating to chiropractors, sections 201.404 and 201.405 of the Occupations Code specifically permit release of chiropractic records to certain parties and in certain circumstances. Furthermore, although section 261.206 was enacted later than sections 201.404 and 201.405, there is no clear evidence that the legislature intended the general provision to prevail.¹ Therefore, we determine sections 201.404 and 201.405 of the Occupations Code prevail over section 201.206(a) of the Occupations Code.

Accordingly, we conclude the chiropractic records we have marked are subject to chapter 201 of the Occupations Code and may only be released in accordance with sections 201.404 and 201.405. Thus, if the requestor provides the proper consent, the

¹*See* Act of June 1, 2003, 78th Leg., R.S., ch. 329, § 1, 2003 Tex. Gen. Laws 1405 (enacting section 201.206 of the Occupations Code); Act of May 17, 1999, 76th Leg., R.S., ch. 388 § 1, 1999 Tex. Gen. Laws 1431, 1546 (enacting sections 201.404 and 201.405 of the Occupations Code).

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marked chiropractic records must be released to him. *See* Occ. Code §§ 201.404, .405. Otherwise, the marked chiropractic records must be withheld under section 552.101 of the Government Code in conjunction with section 201.402 of the Occupations Code.

In summary, the chiropractic records we have marked may only be released in accordance with chapter 201 of the Occupations Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code.

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, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 387429

Enc. Submitted documents

cc: Requestor
(w/o enclosures)