



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 9, 2010

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

OR2010-16999

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# 399544.

The Texas Board of Chiropractic Examiners (the "board") received a request for all policy statements, interpretations of the law or rules, or e-mails related to the scope of practice for chiropractors during a specified period of time. You state you are releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we address the requestor's contention that the board did not comply with section 552.301(d) of the Government Code. Pursuant to section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The board states it received the request for information on August 25, 2010. This office does not count any holidays, including skeleton crew days observed by a governmental body, as

business days for the purpose of calculating a governmental body's deadline under the Act. The board informs this office it observed a skeleton crew day on August 27, 2010 and Labor Day on September 6, 2010. Therefore, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was September 10, 2010. The requestor asserts, and the board acknowledges, that the requestor was not provided with a copy of the board's communications with our office until after September 10, 2010. Upon review of the submitted arguments and submitted documentation, we find that the board failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to provide the requestor with information as required by section 552.301 results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. You assert the requested information is excepted under sections 552.103, 552.107, and 552.111 of the Government Code. These sections, however, are discretionary in nature. They serve only to protect a governmental body's interests, and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 not compelling reason to withhold information under section 552.302), 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the requested information may be withheld under section 552.103, section 552.107, or section 552.111 of the Government Code. Although you also state third party interests may be at stake, we have received no arguments from any interested third-party. *See* Gov't Code § 552.305. However, because sections 552.117 and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.<sup>1</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be

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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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

kept confidential under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). We note that section 552.117 encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Therefore, to the extent the official at issue made a timely request for confidentiality under section 552.024, the board must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code, if the cellular service was paid for with personal funds. If the official did not timely elect confidentiality for the marked cellular telephone number or the cellular service is not paid for with personal funds, the board may not withhold the marked cellular telephone number under section 552.117(a)(1) 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). Gov't Code § 552.137(a)-(c). 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 addresses we have marked do not appear to be of the types specifically excluded by section 552.137(c). Accordingly, the board must withhold the e-mail addresses we have marked in the submitted information under section 552.137, unless the owners of the addresses affirmatively consent to their release.<sup>2</sup> *See id.* § 552.137(b).

In summary, to the extent the official at issue made a timely request for confidentiality under section 552.024 of the Government Code, the board must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code, if the cellular service was paid for with personal funds. The board must withhold the e-mail addresses we have marked in the submitted information under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release. The remaining information must be released to the requestor.

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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](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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 399544

Enc. Submitted documents

c: Requestor  
(w/o enclosures)