



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 25, 1996

Mr. Bill R. Jones
Attorney-Mediator
306 North Washington Street
P. O. Box 1108
Livingston, Texas 77351-1108

OR96-1766

Dear Mr. Jones:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100805.

The Livingston Independent School District (the "district"), which you represent, received a request for three categories of information related to the injuries and treatment of student athletes by a specific chiropractor. You state that the district objects to the release of the requested information, because much of the information contains medical information or is made confidential by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. You have submitted a representative sample of the requested information for our consideration.¹ We have considered your arguments and have reviewed the documents at issue.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 *without the necessity of requesting an attorney general decision* as to those exceptions and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

FERPA, without the necessity of requesting an attorney general decision as to that exception.

Open Records Decision No. 634 (1995) applies only to "education records" which are defined under FERPA as records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision No. 224 (1979). You have submitted to this office records which you have de-identified pursuant to FERPA in order to avoid personally identifying a student, therefore, the de-identified documents may not be withheld under FERPA.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Included among the documents that you submitted to this office for review are certain medical records. Some of these medical records are governed by the Medical Practice Act, ("MPA"), V.T.C.S. article 4495b and may only be released in accordance with the MPA. Section 5.08 of the MPA provides in pertinent part:

(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except at provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than persons . . . 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.

²If you have further questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 (1995) at 4 n.6, 8 n.9.

Specifically, section 5.08(b) of the MPA, makes confidential “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a physician.” See Attorney General Opinion JM-229 (1984). Records must be kept confidential under article 4495b only if they are actually prepared or maintained by a physician. *Id.* at 2; Open Records Decision No. 343 (1982) at 1. In reviewing the submitted records, we note the presence of medical records subject to the MPA provisions, which may only be released as provided by the MPA.³

In response to the open records request, you have also submitted for our review chiropractic medical records. Some of these records are excepted from required public disclosure by section 552.101 of the Government Code in conjunction with article 4512b, section 1b(b). Section 1b(b) provides that “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 in this section.” Article 4512b, section 1b(c) provides for a special right of access to these records. This provision also requires that anyone receiving confidential chiropractic records may not disclose the information except to the persons listed in subsection (h). The disclosure also must be consistent with the authorized purposes for which the information was first obtained. Consequently, access to chiropractic medical record information obtained by the district is governed by article 4512b, section 1b(c) rather than by chapter 552 of the Government Code. See, e.g., Open Records Decision No. 565 (1990) (release of medical records). Therefore, the chiropractic medical record information may be released only as provided under article 4512b, section 1b(c).⁴

The remaining records may include certain information which is excepted from disclosure pursuant to section 552.101 of the Government Code, which includes the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right of privacy if: (1) the information contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Id.* at 683-85; Open Records Decision No. 628 (1994). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that 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. 540

³We note that some of the information you have submitted as medical records includes billing information which is not prepared or maintained by a physician. We do not believe that this information is subject to section 5.08 of the MPA.

⁴We note, however, that the identity of any patient whose chiropractic records are examined during any disciplinary investigation or proceeding of a chiropractor must be protected by the Texas Board of Chiropractic Examiners. V.T.C.S. art. 4512, § 1b(g)(5); see also § 1b(g)(6).

S.W.2d at 683. We note, however, that the submitted records have been de-identified and thus privacy does not appear to be implicated.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad

Assistant Attorney General
Open Records Division

SH/cbh

Ref.: ID# 100805

Enclosures: Submitted documents

cc: Mr. Patte B. Kent
Executive Director
Texas Board of Chiropractic Examiners
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(w/o enclosures)