Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 14, 1997

Mr. John F. Zavala
Enforcement Coordinator
Texas Board of Chiropractic Examiners
333 Guadalupe, Tower III, Suite 825
Austin, Texas 78701

OR97-1591

Dear Mr. Zavala:

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# 107930.

The Texas Board of Chiropractic Examiners (the "board") received a request for "any and all administrative files, correspondence files, expense files on all Texas Board of Chiropractic Members who hold a license to practice chiropractic." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents you have submitted.[1]

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-

[1]We 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). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

law right to privacy under section 552.101. *Hubert v. Hart-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, *writ ref'd. n.r.e.)*. Consequently, we will consider these two exceptions together.

Because there is a legitimate public interest in the activities of public employees in the workplace, information about public employees is commonly held not to be excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees), 423 (1984) at 2 (scope of public employee privacy is narrow). This office has concluded in the past that common-law privacy does not protect information about the educational training of an applicant or employee; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and telephone numbers of character references; and information about job performance. Open Records Decision No. 455 (1987) at 9.

On the other hand, common-law privacy generally protects information about an individual's overall financial status and financial history. Open Records Decision No. 373 (1983) at 3 (background financial information, including credit history, is type of intimate information generally protected under common-law privacy). As we believe that no legitimate public interest exists in the credit card numbers, the information which you have highlighted in item number 2, which you submitted for our review, may be withheld from disclosure under sections 552.101 and 552.102.[2] The remaining requested information in item number 2 must be released to the requestor.

Furthermore, this office has previously determined that information revealing the designation of beneficiaries of insurance and retirement funds is confidential under the right of privacy. Open Records Decision No. 600 (1992) at 10. *Id.* In addition, information relating to the employee's choice of carrier and his election of optional coverages is excepted from disclosure. *Id.* Consequently, the beneficiary, choice of carrier, and election of optional coverage information contained in the documents submitted as item numbers 3 and 5 is excepted from required public disclosure under sections 552.101 and 552.102. However, information revealing that an employee participates in a group insurance plan funded by the governmental body or has enrolled persons in addition to himself is not excepted from disclosure. *Id.*

Section 552.101 also encompasses information made confidential by statute. Title 26, section 6103(a) of the United States Code makes confidential as tax return information the Form W-4, the Employee's Withholding Allowance Certificate. Open Records Decision No. 600 (1992) at 8-9. Therefore, you must withhold from public disclosure the information submitted in item number 4.[3]

---

[2]We note that the requestor has subsequently written to this office stating that he does not seek the credit card numbers of board members or employees.

[3]We note that the requestor has subsequently written this stating that he does not seek copies of board members' or employees' W-4 forms.

Finally, we note that section 552.117(1) may be applicable to some of the submitted information. Section 552.117(1) excepts from public disclosure the home address, home telephone number, social security number, and information about family members of a current or former official or employee of a governmental body who has complied with section 552.024 of the Government Code. The board must not release this information if the board member had chosen to keep the section 552.117 information confidential pursuant to section 552.024 before this request for information was received by the board. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). Also, if the individual's social security number was obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, it is confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code.

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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/glg

Ref.: ID# 107930

Enclosures: Submitted/marked documents

cc: Mr. John D. Pringle
Law Offices of John D. Pringle
The Vaughn Building
807 Brazos, Suite 603
Austin, Texas 78701
(w/o enclosures)