



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2004

Ms. Sandra Smith
Texas Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2004-4178

Dear Ms. Smith:

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# 202201.

The Texas Board of Chiropractic Examiners (the "board") received a request for information related to a particular facility. You state that some responsive information is being provided to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under sections 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.136 of the Government Code 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(b). For purposes of this exception, "access device" means

a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

Id. § 552.136(a). The board has not explained nor is it apparent to this office that the number you marked is excepted from disclosure under section 552.136. Accordingly, the board may not withhold any of the submitted information based on section 552.136.

You next assert that an e-mail address contained in the submitted information is excepted from disclosure under section 552.137 of the Government Code, which makes certain e-mail addresses confidential. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Thus, section 552.137 excepts from public disclosure certain personal e-mail addresses that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. 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 in the submitted documents is that of the facility. Therefore, the board may not withhold the e-mail address in the submitted documents under section 552.137.

The submitted information also includes a Texas driver's license number. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). The board must withhold the Texas driver's license number based on section 552.130.

We note that the submitted information contains a social security number. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ This section encompasses information protected by other statutes. Section 58.001 of the Occupations Code 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 § 58.001. The social security number at issue appears on the chiropractic facility application for registration. We find that the social security number is confidential under

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 58.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right to privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. *Id.* at 683.

This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common-law privacy as encompassed by section 552.101 of the Government Code. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11. We find no indication that the financial information at issue relates to a transaction between the named individual and a governmental body. We have accordingly marked the financial information for redaction and determine that this information must be withheld pursuant to section 552.101 in conjunction with the common-law right to privacy.

In summary, the board must withhold the Texas driver's license number based on section 552.130. The social security number that appears on the chiropractic facility application for registration is confidential under section 58.001 of the Occupations Code and must be withheld from disclosure under section 552.101 of the Government Code. We have marked financial information that must be withheld pursuant to section 552.101 in conjunction with the common-law right to privacy. The remaining submitted information must be released to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 202201

Enc. Submitted documents

c: Mr. Jesse Green
Parker College of Chiropractic
2500 Walnut Hill Lane
Dallas, Texas 75229
(w/o enclosures)