



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2004

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

OR2004-4244

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202198.

The Texas Board of Chiropractic Examiners (the "board") received a request for five categories of information relating to Dr. Darla J. Brown, D.C., and the St. John Therapy Center, Inc. You inform us that the board is releasing some of the requested information. You claim that other responsive information is excepted from disclosure under sections 552.026, 552.114, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential.¹ The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless

¹Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

otherwise authorized by the student's parent.² See 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). The board is not an educational agency or institution.

FERPA provides, however, that an educational agency or institution may only transfer personal information to a third party "on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student." *Id.* § 1232g(b)(4)(B). The federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. See 34 C.F.R. § 99.33(a)(2). In this instance, the board appears to have received two of the submitted transcripts from the educational institutions themselves. If so, then pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2), the board may only release those transcripts, which we have marked, upon consent of Dr. Brown. If the board did not receive the marked transcripts from the educational institutions, then the board may not withhold those transcripts under FERPA. As it does not appear that the board received any of the other submitted transcripts from the educational institutions themselves, the board may not withhold any of the remaining transcripts under FERPA.³

We note that the remaining transcripts, as well as other submitted documents, contain Dr. Brown's social security number. The submitted documents also appear to contain the social security number of at least one other individual licensed by the board. Section 552.101 of the Government Code also incorporates section 58.001 of the Occupations Code. This section 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 § 58.001.⁴ Dr. Brown's social security number, as well as the social security number of any other applicant for or holder of a license, certificate of registration, or other legal authorization issued by the board to practice chiropractic, must be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code.

²Section 552.026 incorporates FERPA into chapter 552 of the Government Code.

³As our determinations under FERPA are dispositive, we need not address section 552.114.

⁴We note that the Seventy-eighth Legislature renumbered former section 56.001 of the Occupations Code as section 58.001. See Act of June 21, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Sess. Law Serv. 4146.

The submitted documents also contain social security numbers that do not appear to be confidential under section 58.001. The board may be required to withhold these social security numbers under section 552.101 in conjunction with federal law. A social security number is confidential under section 552.101 in conjunction with the 1990 amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number under any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that requires or authorizes the board to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained under such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the board should ensure that it was not obtained and is not maintained under any provision of law enacted on or after October 1, 1990.

You also raise section 552.130 of the Government Code. This section excepts from public disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). The Texas driver's license numbers that you have marked must be withheld under section 552.130.

Section 552.136 is applicable to certain account numbers and other "access devices." This section provides as follows:

(a) In this section, "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.

(b) Notwithstanding 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. You indicate that the submitted documents contain "access device numbers," which you appear to have marked. However, you have not explained how or why

any of the marked information comes within the scope of section 552.136(a). We therefore conclude that you may not withhold any of that information under section 552.136.

Lastly, we address your claim under section 552.137. As amended by the 78th Legislature, this section provides as follows:

(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 § 552.137.⁵ Section 552.137(a) is applicable to certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has

⁵We note that former section 552.136 of the Government Code, which also related to the confidentiality of certain e-mail addresses, has been repealed as being duplicative of section 552.137. See Act of May 21, 2003, 78th Leg., R.S., ch. 1276, § 9.013, 2003 Tex. Sess. Law Serv. 4158, 4218.

affirmatively consented to its public disclosure. Section 552.137(a) is not applicable to the types of e-mail addresses listed in section 552.137(c) or 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. To the extent that the e-mail addresses that you have marked are those of private individuals, we agree that they are confidential under section 552.137(a). The board must withhold all such e-mail addresses under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

In summary: (1) educational transcripts that the board received from the educational institutions themselves may only be released upon Dr. Brown's consent, as provided by section 1232g(b)(4)(B) of title 20 of the United States Code and section 99.33(a)(2) of title 34 of the Code of Federal Regulations; (2) the social security number of any applicant for or holder of a license, certificate of registration, or other legal authorization issued by the board to practice chiropractic must be withheld under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code; (3) the board may be required to withhold a social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code; (4) the board must withhold Texas driver's license numbers under section 552.130; and (5) the board must withhold the e-mail address of a member of the public under section 552.137, unless the owner of the e-mail address has affirmatively consented to its public disclosure. The rest of the submitted information is not excepted from disclosure and must be released.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 202198

Enc: Submitted documents

c: Ms. Cassandra Wheatley
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(w/o enclosures)