



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 22, 2005

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

OR2005-02437

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# 221044.

The Texas Board of Chiropractic Examiners (the "board") received a request for information relating to Dr. Jesus Castaneda, including facility and radiologic registrations; licenses issued to Dr. Castaneda; facility licenses, certificates, or withdrawal of licenses; and documentation of reprimands, complaints, and investigations. You inform us 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, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. 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

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

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 otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1).² "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).

You inform us that the educational transcripts submitted as Exhibit A were received directly from the educational institutions. Based on your representation, we conclude that pursuant to sections 1232g(b)(4)(B) and 99.33(a)(2), the board may only release the transcripts upon consent of Dr. Castaneda.³

Section 552.101 also incorporates section 58.001 of the Occupations Code, which 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. Exhibits B and C contain Dr. Castaneda's social security number, which we have marked. The board must withhold this social security number under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code.

Lastly, we address your claim under section 552.137. 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

²Section 552.026 incorporates FERPA into the Act. *See* Gov't Code § 552.026.

³As our determination under FERPA is dispositive, we need not address section 552.114.

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. Section 552.137 excepts from disclosure 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 affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. Likewise, this exception 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.

In this instance, two of the e-mail addresses that you have marked are provided by a governmental body to one of its employees. The board may not withhold those e-mail addresses under section 552.137. Otherwise, we agree that the e-mail addresses that you seek to withhold are confidential under section 552.137. Exhibit B also contains other e-mail addresses that are encompassed by this exception. We have marked the e-mail addresses that

the board must withhold under section 552.137, unless the individual to whom an e-mail address belongs has affirmatively consented to its public disclosure.

In summary: (1) the educational transcripts may only be released upon Dr. Castaneda'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) Dr. Castaneda's social security number must be withheld under section 552.101 of the Government Code in conjunction with section 58.001 of the Occupations Code; and (3) the marked e-mail addresses must be withheld under section 552.137, unless the individual to whom an e-mail address belongs has affirmatively consented to its public disclosure. The rest of the submitted information must be released. As we are able to make these determinations, we need not address your claim under section 552.130.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 221044

Enc: Submitted documents

c: Mr. Jerry L. Rios
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(w/o enclosures)