



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 16, 2011

Mr. Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2011-02346

Dear Mr. Parker:

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# 410183.

The Texas Board of Chiropractic Examiners (the "board") received a request for the board records pertaining to a named individual. You state the board is releasing some of the requested information, but claim the submitted information is exempted from disclosure under sections 552.101 and 552.114 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

You seek to withhold the submitted documents in Attachment E, which you inform us consist of transcripts, a diploma, and school records, as education records under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, which governs the availability of education records held by educational

¹Although you raise section 552.026 of the Government Code as an exception to disclosure, we note section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA").

²We assume 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 those records contain substantially different types of information than that submitted to this office.

institutions or agencies receiving federal funds. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information").

The board maintains the information at issue, but it is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth is not an "educational agency" within FERPA). However, you state the documents in Attachment E "were received by the [b]oard from educational agencies with the written consent of the student." FERPA contains provisions that govern access to education records that were transferred by an educational agency or institution to a third party. Therefore, we will not address the applicability of FERPA to Attachment E because our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. Such determinations under FERPA must be made by the educational authorities from which education records were obtained. Thus, the board must contact the educational institutions from which it obtained the documents in Attachment E, as well as the DOE, regarding the applicability of FERPA to this information. Likewise, we do not address your arguments under section 552.114 of the Government Code. *See* Gov't Code § 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, including section 201.206 of the Occupations Code. Section 201.206 provides, in part, the following:

(a) The board's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

...

(d) Notwithstanding Subsection (a), the board may:

³A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>

- (1) disclose a complaint to the affected license holder; and
- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

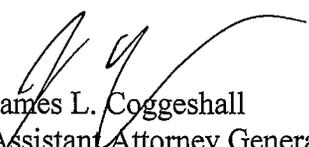
Occupations Code § 201.206(a), (d). You inform us section 201.206 applies to "all investigations pending or opened on or after September 1, 2003." You indicate Attachments B, C, and D consist of, or are contained in, investigation files of complaints about a chiropractor licensed by the board that are maintained by the board pursuant to section 201.204 of the Occupations Code. *See id.* § 201.204 (board's record keeping requirements for complaints). You assert the information at issue is confidential under section 201.206. You do not inform us the requestor is entitled to any of the information at issue pursuant to section 201.206(d)(2). Thus, based on your representations and our review, we agree the board must withhold Attachments B, C, and D under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code.

To conclude, the board must contact the educational institutions from which it obtained the submitted documents in Attachment E, as well as the DOE, regarding the applicability of FERPA to the documents. The board must withhold Attachments B, C, and D under section 552.101 of the Government Code in conjunction with section 201.206 of the Occupations Code.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tf

Ref: ID# 410183

Enc. Submitted documents

c: Requestor
(w/o enclosures)