



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 13, 2008

Ms. Laura C. Rodriguez  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2008-08152

Dear Ms. Rodriguez:

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# 312843.

The Northside Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency ("TEA") for six categories of information pertaining to a named individual. You state that you will release some of the responsive information. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purposes of our review in the open records ruling process under the Act.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records 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"). A portion of the information that you have marked under FERPA includes a police report created and maintained by the district's police department. We note, however, that FERPA is not applicable to law enforcement records maintained by the district's police department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. Further,

---

<sup>1</sup>A 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>.

you have submitted, among other things, redacted education records for our review. You state you will withhold the identifying information of students from the requested documents pursuant to FERPA.<sup>2</sup> Accordingly, we will address the applicability of the claimed exceptions to the remainder of the submitted information.

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 protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We note that the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, some of the information at issue involves reports of alleged or suspected abuse made to the Child Protective Services Division of the Texas Department of Family and Protective Services (“CPS”), as well as the identity of the person making the report. Furthermore, some of the submitted information involves a report of alleged abuse made to the district’s police department. Therefore, this information, which we have marked, is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

We note that section 22.082 of the Education Code constitutes “applicable state law” in this instance. Section 22.082 of the Education Code provides that the TEA “may obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.” Act of

---

<sup>2</sup>Because FERPA is dispositive, we need not address the district’s remaining arguments against disclosure for student identifying information.

May 29, 1995, 74<sup>th</sup> Leg., R.S., ch. 260, 1995 Tex. Gen. Laws 2007, 2285, *amended by* Act of May 28, 2007, 80<sup>th</sup> Leg., R.S., ch. 1372, § 6, 2007 Tex. Sess. Law Serv. 4658, 4659. CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2); *see also id.* §§ 411.090 (State Board for Educator Certification (“SBEC”) is entitled to obtain CHRI from Department of Public Safety [“DPS”] about a person who has applied to [SBEC] for certificate under Subchapter B, Chapter 21, Education Code), 411.087(a)(2) (agency that is entitled to obtain CHRI from DPS is also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined).

In this instance, the requestor is an investigator with the TEA, which has assumed the duties of SBEC, and states that the TEA is conducting an investigation of an individual who has applied for or currently holds educator credentials.<sup>3</sup> The requestor specifically seeks, in part, “copies of any reports, notes, statements or memorandum” regarding an investigation of the named individual performed by the district. We understand that the information at issue is not contained in any closed criminal investigation file that relates to a specific applicant for or holder of a certificate under Subchapter B, Chapter 21 of the Education Code. Consequently, if the district determines that release of the CHRI is consistent with the Family Code, the district must release information from the submitted documents to this requestor that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). In that instance, the district must withhold the remainder of the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If, however, the district determines that release is not consistent with purposes of the Family Code, the district must withhold the portions of the submitted information we have marked in their entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5 (1986); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information).

---

<sup>3</sup>The Seventy-ninth Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

Section 552.102(b) of the Government Code excepts from disclosure all information from transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, except for the information that reveals the employee's name, the courses taken, and the degree obtained, we find that section 552.102(b) of the Government Code is generally applicable to the submitted transcripts.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, 117(a)(1). Additionally, section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state, and have provided documentation showing, that the employee whose personal information is at issue timely elected to keep her personal information confidential. Accordingly, section 552.117(a)(1) of the Government Code is generally applicable to the personal information you have marked.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). Therefore, section 552.137 of Government Code is generally applicable to the e-mail address you have marked.

However, we note that the TEA's request states that it is seeking this information under the authority provided to SBEC by section 249.14 of title 19 of the Texas Administrative Code.<sup>4</sup> Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits the TEA to obtain information that is otherwise protected by the exceptions discussed above. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure).

---

<sup>4</sup>Chapter 21 of the Education Code authorizes SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators. *See* Educ. Code § 21.031(a). Section 21.041 of the Education Code states that SBEC may "provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code." *Id.* § 21.041(b)(7). Section 21.041 also authorizes SBEC to "adopt rules as necessary for its own procedures." *Id.* § 21.041(a).

Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 249.1. Section 249.14 provides in relevant part:

(a) The [TEA] staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the [SBEC] denying relief to or taking disciplinary action against the person or certificate.

...

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

19 T.A.C. § 249.14. We note that this regulation does not specifically grant access to information subject to section 261.201 of the Family Code. We further note that section 261.201 of the Family Code has its own access provision governing release of information. Generally, if confidentiality provisions or another statute specifically authorize release of information under certain circumstances or to particular entities, then the information may only be released or transferred in accordance therewith. *See* Attorney General Opinions DM-353 (1995) at 4-5 n.6 (detailed provisions in state law for disclosure of records would not permit disclosure “to other governmental entities and officials . . . without violating the record’s confidentiality”), JM-590 (1986) at 5 (“express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others”); Open Records Decision No. 655 (1997) (because statute permitted Department of Public Safety to transfer confidential criminal history information only to certain entities for certain purposes, county could not obtain information from the department regarding applicants for county employment). We also note that an interagency transfer of this information is not permissible where, as here, the applicable statute enumerates the specific entities to which information encompassed by the statute may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinion GA-0055.

Furthermore, where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). In this instance, although section 249.14 generally allows TEA access to information relating to suspected misconduct on the part of an educator, section 261.201 of the Family Code specifically protects child abuse reports and investigative information and material. Section 261.201 of the Family Code specifically permits release of such information to certain parties and in certain circumstances that do not include the TEA’s request in this instance. We therefore conclude that, notwithstanding section 249.14, the district must

withhold the information that is excepted from disclosure based on section 261.201 of the Family Code. *See also* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission). However, TEA has a right of access to the remaining submitted information relating to the educator's suspected misconduct pursuant to section 249.14, which prevails over the Act's exceptions to disclosure. *Cf.* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

In summary, if the district determines that release of the CHRI contained in the information we have marked as subject to section 261.201 of the Family Code is consistent with the Family Code, then the CHRI must be released, and the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>5</sup> If, however, the district determines that release is not consistent with the purposes of the Family Code, then the information we have marked must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Because TEA is requesting the information in an investigation under section 249.14 of title 19 of the Texas Administrative Code, the remaining information must be released to TEA in this instance.<sup>6</sup>

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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

---

<sup>5</sup>We note that, because the requestor may have a special right of access to this information in this instance, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 challenge 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 Office of the Attorney General 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. 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,



Benjamin A. Diener  
Assistant Attorney General  
Open Records Division

BAD/jb

Ref: ID# 312843

Enc. Submitted documents

c: Ms. Deborah Tramel Owen  
Texas Education Agency  
Office of Investigations  
Educator Certification and Standards  
1701 North Congress Avenue  
Austin, Texas 78701-1494  
(w/o enclosures)