



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2008

Mr. Robert Viña III
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2008-12901

Dear Mr. Viña:

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# 322278.

The Judson 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 district employee. You state that the district has released some of the requested information. You state that you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.117, 552.130, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially you inform us that the district inadvertently released the submitted information to the requestor. You argue that this release does not act to waive the district's claim that this information is excepted from disclosure. Prior decisions from our office have concluded that the involuntary disclosure of information on a limited basis, through no official action and against the wishes and policy of the governmental body, does not waive exceptions under

¹ Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

² Although you raise section 552.101 of the Government Code in conjunction with Rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

the Act. *See* Open Records Decision Nos. 387 at 3 (1983) (information not voluntarily released by governmental body that nevertheless comes into another party's possession not henceforth automatically available to everyone), 376 at 2 (1983). *Cf.* Open Records Decision No. 676 at 10-11 (2002) (where document has been voluntarily disclosed to opposing party, attorney-client privilege has generally been waived). Based on the information you have provided, we agree that the district has not waived its claim that this information is excepted from disclosure. Therefore, we will consider the exceptions you claim for the submitted information.

You assert that pages AG-028 through AG-055 are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this instance, you state that the submitted information pertains to a criminal investigation by the district's police department that did not result in a conviction or deferred adjudication. Based on this representation, we conclude that section 552.108(a)(2) is applicable to the submitted information.

We note that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). With the exception of basic information, the district may generally withhold the submitted information under section 552.108(a)(2).

We note, however, that the requestor is with the Texas Education Agency (the "TEA") which has assumed the duties of the State Board for Educator Certification (the "SBEC").³ Section 22.082 of the Education Code provides that the SBEC "may obtain from any law enforcement or criminal justice agency all criminal history record information 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." Educ. Code § 22.082. Additionally, section 411.090 of the Government Code specifically grants a right of access for the SBEC to obtain criminal history record information ("CHRI") from the Department of Public Safety ("DPS"). Section 411.090 provides:

(a) The [SBEC] is entitled to obtain from [DPS] any criminal history record information maintained by [DPS] about a person who has applied to the board for a certificate under Subchapter B, Chapter 21, Education Code.

³ The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to TEA, effective September 1, 2005.

Gov't Code § 411.090. Furthermore, pursuant to section 411.087 of the Government Code, an 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]." *Id.* § 411.087(a)(2). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions." *Id.* § 411.082(2).

We find that, when read together, section 22.082 of the Education Code and sections 411.087 and 411.090 of the Government Code give the TEA a statutory right of access to the information at issue. *See id.*; *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th 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). Accordingly, we conclude that the TEA may obtain the information in AG-028 through AG-055 in its entirety because it is a closed criminal investigation that relates to a specific applicant for or holder of a certificate under Subchapter B, Chapter 21 of the Education Code.

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 exception encompasses information made confidential by statute. You raise section 552.101 in conjunction with section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex.App.—Austin 2006, no pet.). This section applies to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word "teacher" means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. You state that some of the requested information relates to a teacher who held the appropriate teaching certificate and evaluates the individual's performance as a teacher. Based on your representations and our review of the information at issue, we conclude that the information you have marked consists of teacher evaluations for the purposes of section 21.355. Therefore, the district must withhold the evaluations you have marked under section 552.101 of the Government Code in conjunction with section 21.355.

You also raise section 552.130 of the Government Code. This section excepts from 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 district must withhold the information we have marked under section 552.130.

We note that TEA’s request states that it is seeking this information under the authority provided to the SBEC by section 249.14 of title 19 of the Texas Administrative Code.⁴ Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits 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).

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) [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 executive director and 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 these regulations do not specifically grant access to information subject to section 21.355 of the Education Code or section 552.130 of the Government Code. We further note that section 21.355 of the Education Code and section 552.130 of the Government Code have their own access provisions 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 GA-0055 (2003) at 3-4 (SBEC not entitled to access teacher appraisals made confidential by section 21.355 of the Education Code where section 21.353 of the Education Code expressly authorizes limited release of appraisals to other school districts in connection with teachers’ employment applications), DM-353 (1995) at 4-5 n.6 (detailed provisions in state law for disclosure of records would not permit disclosure “to other

⁴ 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).

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 statutes enumerate 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, 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.). Although section 249.14 generally allows TEA access to information relating to suspected misconduct on the part of an educator, section 21.355 of the Education Code specifically protects teacher evaluations, and section 552.130 specifically protects Texas motor vehicle record information. These sections specifically permit release to certain parties and in certain circumstances that do not include TEA's request in this instance. We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information that is excepted from disclosure under section 21.355 of the Education Code and section 552.130 of the Government Code. See 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).

You assert that some of the remaining information is excepted under sections 552.107, 552.117, 552.137, and 552.147 of the Government Code.⁵ However, these sections are general exceptions to disclosure under the Act. Therefore, we find that TEA's statutory right

⁵ Section 552.107 protects information that "an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct." Gov't Code § 552.107. Section 552.117 excepts from public disclosure the present and former home addresses and 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. *Id.* § 552.117. Section 552.137 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." *Id.* § 552.137. Section 552.147 excepts from disclosure the social security number of a living person. *Id.* § 552.147.

of access prevails over these general exceptions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, TEA has a right of access to the remaining information pursuant to section 249.14. *See* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

In summary, the district must withhold the information subject to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must also withhold the information we have marked under section 552.130 of the Government Code. The district must release the remaining information to TEA pursuant to section 249.14 of title 19 of the Texas Administrative Code, and section 22.082 of the Education Code and sections 411.087 and 411.090 of the Government Code.⁶

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). If the governmental body does not file suit over 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).

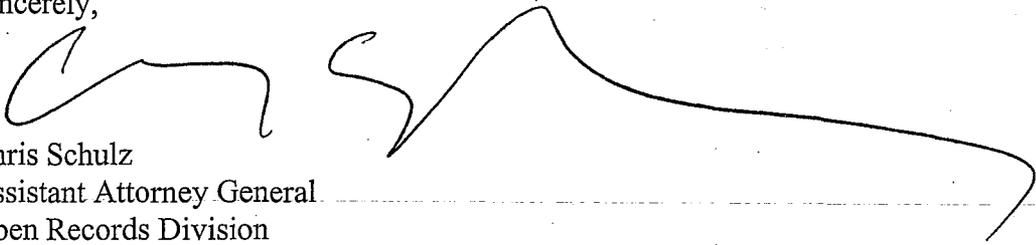
⁶ We note that because the requestor has a special right of access to this information in this instance, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/mcf

Ref: ID# 322278

Enc. Submitted documents

c: Ms. Deborah Tramel Owen
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(w/o enclosures)