



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 17, 2010

Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna, P.C.
Attorney for Garland Independent School District
4411 North Central Expressway
Dallas, Texas 75205

OR2010-03785

Dear Ms. Donley:

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# 373005.

The Garland Independent School District (the "district"), which you represent, received two requests from an investigator with the Texas Education Agency (the "TEA") for six categories of information pertaining to a named district teacher. You state that some of the requested information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed 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." Section 552.101 encompasses section 1304(b) of title 8 of the United States Code, which addresses the confidentiality of records of the registration of aliens under section 1301 of the United States Code. Section 1304(b) provides:

(b) Confidential Nature

All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only

- (1) pursuant to section 1357(f)(2) of this title, and
- (2) to such persons or agencies as may be designated by the Attorney General.

8 U.S.C. § 1304(b). Upon review, we find the alien registration information you have marked is confidential under title 8, section 1304(b) of the United States Code and must be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

You state the submitted information includes teacher certification exam results for the teacher at issue. You further state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Based on your representations and our review, we agree the district must withhold the information at issue, which you have marked, under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

You contend the remaining information includes Texas motor vehicle record information excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 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. *Id.* § 552.130. Accordingly, the district must withhold the Texas motor vehicle record information you have marked under section 552.130 of the Government Code.¹

We note the TEA's two requests both state it is seeking this information under the authority provided to the State Board for Educator Certification ("SBEC") by section 249.14 of title 19

¹ We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers and Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting a ruling from this office.

of the Texas Administrative Code.² 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).

Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving the SBEC. *See* 19 T.A.C. § 249.4. 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 [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(a), (c). In this instance, the TEA requestor states that he is investigating allegations made against the named district teacher and that he needs to review the requested records to determine whether measures need to be taken against this person's teaching credentials. Thus, we find the information at issue is subject to the general right of access afforded to the TEA under section 249.14. However, because some of the requested information is specifically protected from public disclosure by the statutes discussed above, we find there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14.

With regard to the submitted alien registration information, we noted above that this information is confidential pursuant to section 1304(b) of title 8 of the United States Code. As a federal law, section 1304(b) preempts any conflicting state provisions, including section 249.14 of the Texas Administrative Code. *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Accordingly we find that, notwithstanding section 249.14 of the Texas Administrative Code, the submitted alien registration

² 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).

information is confidential pursuant to section 1304(b) of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

With regard to the remaining information, we note that where general and specific provisions 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 the TEA access to information relating to suspected misconduct on the part of an educator, section 21.048 of the Education Code specifically protects teacher certification examination information. This section specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Furthermore, section 552.130 of the Government Code specifically protects Texas motor vehicle record information and has its own release provisions. Thus, sections 21.048 and 552.130 prevail over the general TEA right of access. We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code and section 552.130 of the Government Code.

You assert that some of the remaining information is excepted from disclosure under sections 552.102, 552.117, 552.137, and 552.147 of the Government Code.³ However, these sections are general exceptions to disclosure that do not have their own release provisions. Therefore, the TEA's statutory right of access under section 249.14 prevails and none of the remaining information may be withheld under these sections. *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 you have marked under section 552.101 in conjunction with section 1304 of Title 8 of the United States Code. The district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. The district must withhold the information you have marked under section 552.130 of the Government

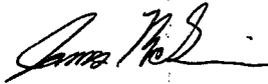
³Section 552.102(b) excepts from disclosure all information from transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102. Section 552.117 excepts from public disclosure the present and former home addresses 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" unless the member of the public consents to its release. *Id.* § 552.137. Section 552.147 excepts from disclosure the social security number of a living person. *Id.* § 552.147.

Code. The district must release the remaining information to the TEA requestor pursuant to section 249.14 of Title 19 of the Texas Administrative Code.⁴

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 McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 373005

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ Because the TEA has a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the district must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.