



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2010

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Gallegos and Green, P.C.
For Devine Independent School District
P.O. Box 460606
San Antonio, Texas 78246

OR2010-07578

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# 380564.

The Devine Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency ("TEA") for reports, notes, statements, or memorandum relating to an investigation of a named district teacher; a copy of the teacher's application for employment; any memorandum or other documents evidencing administrative reprimands or other disciplinary measures; any documents between the district and the teacher relating to her employment; the teacher's service record; any other relevant documents; and the names, addresses, and phone numbers of all the people involved in the investigation. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have only submitted information relating to the teacher's certification. To the extent information responsive to the remaining portions of the request existed on the date of the request, we presume the district has released it. If the district has not, it must do so at this time. *See* Gov't Code §§ 552.301; .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible.)

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. Section 552.101 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.

Educ. Code § 21.048(c-1). A portion of the submitted information, which we have marked, constitutes ExCET exam results of the named teacher. You state subsections 21.048(c-1)(1) and (2) are not applicable. Thus, the district must generally withhold the information we have marked, under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. However, the remaining information does not consist of teacher certification exam results; therefore, the remaining information is not confidential under section 21.048 and may not be withheld under section 552.101 of the Government Code on that basis.

You have marked a driver's license number in the remaining information that you assert is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the Texas motor vehicle record information you have marked is generally subject to section 552.130 of the Government Code.

We note that TEA's request states that it is seeking this information under the authority provided to the State Board for Educator Certification ("SBEC") by section 249.14 of title 19 of the Texas Administrative Code.¹ 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).

¹Chapter 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 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. In this instance, the TEA requestor states that she is investigating alleged improper conduct by the named teacher and needs to review the requested records to determine whether measures need to be taken against the teacher'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 that there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14.

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.). Although section 249.14 generally allows 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, 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 the TEA's request in this instance. Thus, these specific statutes prevail over TEA's general 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 have marked a social security number in the remaining information. Section 552.147 excepts from disclosure the social security number of a living person. Gov't Code § 552.147. However, section 552.147 is a general exception to disclosure. *See* Open Records Decision No. 525 (1989)) (exceptions to disclosure do not apply to information

made public by other statutes). Therefore, the TEA requestor has a right of access to the remaining information at issue pursuant to section 249.14.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code. The district must also withhold the information you have marked under section 552.130 of the Government 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.²

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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 380564

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because 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.