



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

Mr. Fortunato G. Paredes
Escamilla, Poneck & Cruz, LLP
216 West Village Boulevard Suite 202
Laredo, Texas 78041

OR2010-08259

Dear Mr. Paredes:

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# 381647.

The United Independent School District (the "district"), which you represent, received a request from an investigator for the Texas Education Agency ("TEA") for seven categories of information relating to a former teacher of the district. You state that the district has no information that is responsive to categories five and six of the request.¹ You also state that some of the requested information has been released. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. You also inform us that the former teacher was notified of this request for information and of her right to submit comments as to why the requested information should or should not be released.² See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²As of the date of this decision, this office has received no correspondence from the former teacher.

should or should not be released). We have considered the exceptions you claim and reviewed the information you submitted.³

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information that other statutes make confidential. Section 21.048 of the Education Code is applicable to information relating to teacher certification examinations. Section 21.048(c-1) states:

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). One of the submitted documents reveals the results of teacher certification examinations taken by the former teacher. Subsections 21.048(c-1)(1) and (2) do not appear to be applicable in this instance. Therefore, the results of the certification examinations, which we have marked, must generally be withheld under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code.

We note that the submitted documents also contain the former teacher's driver's license number. Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit.⁴ *See* Gov't Code § 552.130(a)(1). The Texas driver's license number we have marked must generally be withheld under section 552.130.⁵

³We note that the former teacher's social security number has been redacted from some of the submitted documents. Section 552.147(b) of the Government Code 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.

⁴This office will raise section 552.130 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

⁵We note that 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 a Texas driver's license number under section 552.130, without the necessity of requesting an attorney general decision.

We next note that TEA seeks access to the submitted information under the authority provided to the State Board for Educator Certification (the "SBEC") by section 249.14 of title 19 of the Texas Administrative Code. Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits TEA to obtain the submitted information that is otherwise protected by sections 552.101 and 552.130 of the Government Code. *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. § 249.1. Section 249.14 provides in part:

(a) Staff [of TEA] 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 board 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.

Id. We note that these regulations do not specifically grant access to information that is subject to section 21.048 of the Education Code or section 552.130 of the Government Code. We also note that section 21.048 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 under those circumstances or to those entities. *See* Attorney General Opinions GA-0055 at 3-4 (2003) (SBEC not entitled to access teacher appraisals made confidential by Educ. Code § 21.355 where Educ. Code § section 21.353 expressly authorizes limited release of appraisals to other school districts in connection with teachers' employment applications), DM-353 at 4-5 n.6 (1995) (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 at 5 (1986) ("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 Texas 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 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.

Moreover, 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 certain examination results, and section 552.130 of the Government Code specifically protects Texas motor vehicle record information. These confidentiality provisions specifically permit release to certain parties and under certain circumstances that do not include the instant request by TEA. We therefore conclude that, notwithstanding section 249.14, the marked information that is confidential under section 21.048 of the Education Code must be withheld from the requestor under section 552.101 of the Government Code, and the marked Texas driver's license information must be withheld under 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).

The district also seeks to withhold some of the remaining information under sections 552.102 and 552.117 of the Government Code.⁶ We note, however, that those sections are general exceptions to disclosure under the Act. Therefore, TEA has a right of access to the remaining information at issue pursuant to section 249.14. *See* Open Records Decision Nos. 525 at 3 (1989) (exceptions to disclosure do not apply to information made public by other statutes), 451 at 4.

In summary: (1) 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; and (2) the district also must withhold the marked Texas driver's license number under section 552.130 of the Government Code. The district must release the rest

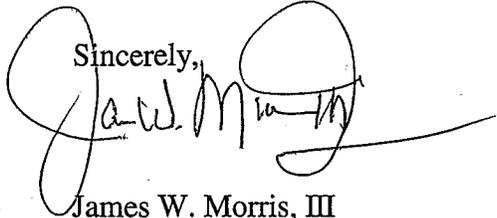
⁶Section 552.102(a) excepts from disclosure information in personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *See* Gov't Code § 552.102(a). Section 552.117 excepts from disclosure the present and former home addresses and telephone numbers, social 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. *See id.* § 552.117(a)(1).

of the submitted information to TEA pursuant to section 249.14 of title 19 of the Texas Administrative Code.⁷

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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 381647

Enc: Submitted documents

c: Requestor
(w/o enclosures)

⁷Because TEA has a right of access to certain information in the submitted documents that would otherwise be excepted from disclosure 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. See Gov't Code §§ 552.301(a), .302.