



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2010

Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2010-12098

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# 388161.

The Garland Independent School District (the "district"), which you represent, received a request for the disciplinary history, employment records, aliases, and contact information for a named former employee from an investigator with the Texas Education Agency (the "TEA"). You state you have released some of the responsive information to the requestor. You claim that portions of the submitted information are 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. Chapter 411 authorizes the Texas Department of Public Safety (the "DPS") to compile and maintain criminal history record information ("CHRI") from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. *See id.* §§ 411.042, .087.

In 2007, the Legislature enacted section 411.0845 of the Government Code, which provides in relevant part:

(a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part that “[a] school district . . . is entitled to obtain from [DPS CHRI] maintained by [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from DPS’s electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states that any CHRI received by a school district is subject to section 411.097(d) of the Government Code. Educ. Code § 22.08391(d). Section 411.097 provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

- (A) the individual who is the subject of the information;
- (B) the [TEA];
- (C) the State Board for Educator Certification;
- (D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or
- (E) by court order[.]

Gov't Code § 411.097(d). Exhibit B consists of a CHRI printout obtained by the district through DPS's electronic clearinghouse. Therefore, this information is generally confidential under section 552.101 in conjunction with sections 411.0845 and 411.097(d) of the Government Code.

However, you acknowledge in this instance, the requestor is an investigator for the TEA. Section 411.097(d) governs the release of CHRI by a school district. Pursuant to section 411.097(d)(1)(B), the TEA is authorized to obtain from the district the CHRI printout that the district obtained from DPS's electronic clearinghouse. *Id.*; *see also* Educ. Code § 22.08391(d); Gov't Code § 411.0901 (the TEA entitled to obtain CHRI from DPS on certain school employees or applicants for employment). Therefore, this CHRI printout obtained pursuant to section 411.0845 in Exhibit B is subject to release to this requestor under section 411.097(d)(1)(B). You claim a portion of this information is excepted from disclosure under sections 552.117 and 552.147 of the Government Code.¹ However, the exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989).

You also assert a portion of the CHRI printout is confidential under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle operator's or driver's license or permit. Gov't Code § 552.130(a)(1). We agree that the information you have marked is generally confidential under section 552.130. This office has found that a specific statutory right of access prevails over general exceptions to disclosure under the Act. ORD 623. However, because section 552.130 has its own access provisions, we conclude section 552.130 is not a general exception under the Act. Accordingly, we must address the conflict between the access provided under section 411.097(d) and the confidentiality provided under section 552.130. Where

¹Section 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. Gov't Code § 552.117. Section 552.147 excepts from public disclosure the social security number of a living person. *Id.* § 552.147.

information falls within both a general and a specific provision of law, the specific provision prevails over the general. *See Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (“more specific statute controls over the more general”); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). In this instance, section 411.097(d) specifically provides access to the entirety of the CHRI printout of the type at issue in this request to certain listed individuals or entities, while section 552.130 generally excepts from disclosure Texas motor vehicle record information maintained in any context. Thus, we conclude the TEA access to the CHRI printout provided under section 411.097(d) of the Government Code is more specific than the general confidentiality provided under section 552.130. Accordingly, the district may not withhold any portion of the CHRI printout in Exhibit B under section 552.130, and this information must be released in its entirety to the requestor pursuant to section 411.097(d) of the Government Code.

We now address your arguments against the disclosure for portions of the remaining information in Exhibits C and D. You assert that the remaining personnel information in Exhibits C and D is excepted from disclosure under sections 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We note that the TEA seeks access to this remaining 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 the TEA to obtain the information in Exhibits C and D that is otherwise protected by the exceptions listed above. *See* ORD 451 at 4 (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 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.

Id. § 249.14(a),(c). In this instance, the TEA requestor states that he is investigating alleged improper conduct by the named former district employee and needs to review the requested records to determine whether measures need to be taken against this person’s teaching credentials. Thus, we find that the remaining personnel information in Exhibit C and D is

subject to the general right of access afforded to the TEA under section 249.14. However, because you assert a portion of this information is specifically protected from public disclosure by section 552.130, we find that there is a conflict between this statute and the right of access afforded to the TEA investigators under section 249.14 for the remaining information.

As stated previously, 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); 555 S.W.2d at 168. Although section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator, section 552.130 specifically protects Texas motor vehicle record information and has its own release provisions. Thus, in this instance, section 552.130 is the specific statute that prevails over the general TEA right of access. We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information you have marked in Exhibit D under section 552.130 of the Government Code.

You assert that some of the remaining information in Exhibits C and D is excepted from disclosure under sections 552.102, 552.117, 552.137, and 552.147 of the Government Code.² We note, however, that those sections are general exceptions to disclosure under the Act. Therefore, the TEA has a right of access to the remaining information at issue in Exhibits C and D 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, the district must withhold the information you have marked in Exhibit D under section 552.130 of the Government Code. The district must release the remaining information to the TEA pursuant to section 411.097(d) of the Government Code and section 249.14 of title 19 of the Texas Administrative Code.³

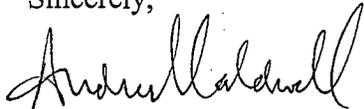
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

²Section 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 552.137 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 or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137.

³Because 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.

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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 388161

Enc. Submitted documents

c: Requestor
(w/o enclosures)