



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 28, 2011

Mr. Sterling T. Burluson
Swchartz & Eichelbaum Wardell Mehl and Handson P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2011-04206

Dear Mr. Burluson:

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# 412344.

The Mission Consolidated Independent School District (the "district"), which you represent, received a request from the Texas Education Agency ("TEA") for information relating to a named individual. You state that student-identifying information has been redacted from some of the responsive records pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state you have released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 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. You seek to withhold criminal history information obtained from the Safe Schools Project under section 552.101 in conjunction with the federal Fair Credit Reporting Act (the "FCRA"). *See* 15 U.S.C. § 1681 *et seq.* Section 22.083 of the Education Code permits the district to obtain criminal history record information from a private entity that is a consumer reporting agency governed by the FCRA. *See* Educ. Code § 22.083(a-1)(3).

¹We note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. A copy of the DOE's letter to this office is posted on the Attorney General's website at: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

We understand that the Safe Schools Project is a consumer reporting agency that furnishes reports to the district to be used for employment purposes. *See* 15 U.S.C. § 1681a(f) (defining “consumer reporting agency”), (h) (defining “employment purposes”). A criminal history report compiled by a private consumer reporting agency is a “consumer report” under the FCRA. *See id.* § 1681a(d) (defining “consumer report”); *see also* www.ftc.gov/bcp/edu/pubs/business/credit/bus08.pdf (stating that criminal histories are consumer reports if obtained from a consumer reporting agency). Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person that the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See id.* § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining “person” and “consumer report”). Section 1681b further provides that “[a] person shall not use or obtain a consumer report for any purpose unless the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; . . . and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” *Id.* § 1681b(f)(1)-(2). Section 1681e provides for the maintenance of compliance procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See id.* § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (federal law strictly limits distribution of consumer credit reports by credit reporting agencies). We find that the submitted Safe Schools Project records are a consumer report for purposes of section 1681b of the FCRA. We note that the FCRA does not permit the disclosure of information in a consumer report for the purpose of responding to a request for information under the Act. We therefore conclude that the Safe Schools Project records, which we have marked, are confidential under section 552.101 of the Government Code in conjunction with the FCRA.

You state you are withholding certain information pursuant to the previous determination issued under section 552.130 of the Government Code in Open Records Decision No. 684 (2009).² Section 552.130 excepts from disclosure information relating to a Texas motor vehicle operator’s or driver’s license or permit. *See* Gov’t Code § 552.130(a)(1). We find the Texas driver’s license number and copy of the employee’s driver’s license you seek to withhold generally excepted from disclosure under section 552.130 of the Government Code.

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. Chapter 249 of title 19 of the Texas

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers and a copy of a Texas driver’s license under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

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. § 249.14. The requestor identifies himself as a staff investigator for TEA and states that TEA is conducting an investigation of the named individual. Accordingly, we will determine 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).

We note the submitted Safe Schools Project records are confidential under the FCRA. As federal law, the FCRA preempts any conflicting provisions of state law, 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). Therefore, notwithstanding section 249.14 of the Texas Administrative Code, the district must withhold the Safe Schools Project records under section 552.101 in conjunction with the FCRA.

We also note that section 249.14 of the Texas Administrative Code does not specifically grant access to information encompassed by section 552.130 of the Government Code, which has its 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 § 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 the applicable statute enumerates 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 552.130 of the Government Code specifically protects Texas motor vehicle record information. Further, section 552.130 specifically permits the release of information to certain parties and under certain circumstances that do not include the instant request by TEA. Therefore, notwithstanding section 249.14, the district must withhold the Texas driver's license number and copy of the employee's driver's license you state will be redacted pursuant to Open Records Decision No. 684. *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 also seek to withhold some of the remaining information under section 552.102(b) of the Government Code.³ Further you state the district will redact a social security number under section 552.147(b) of the Government Code.⁴ However, those sections are general exceptions to disclosure under the Act and do not have their own release provisions. Therefore, TEA's statutory right of access under section 249.14 prevails over those sections, and none of the remaining information may be withheld under section 552.102(b) or section 552.147. *See* ORD 451 at 4 (specific access provision prevails over generally applicable exception to public disclosure). Therefore, the TEA requestor has a right of access to the remaining information at issue pursuant to section 249.14.

³Section 552.102(b) exempts from disclosure a transcript from an institution of higher education maintained in a professional public school employee's personnel file, except for the degree obtained or the curriculum. *See* Gov't Code § 552.102(b).

⁴Section 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. *See* Gov't Code § 552.147.

In summary, the Safe Schools Project records must be withheld under section 552.101 in conjunction with the FCRA and the district must withhold the Texas driver's license number and copy of the employee's driver's license pursuant to the previous determination issued under section 552.130 of the Government Code in Open Records Decision No. 684. The rest of the submitted information must be released to TEA pursuant to section 249.14 of title 19 of the Texas Administrative Code.⁵

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/eeg

Ref: ID# 412344

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁵Because 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 requestor without such a right of access. See Gov't Code §§ 552.301(a), .302.