



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

June 1, 2011

Ms. Lydia L. Perry
Counsel for Frisco Independent School District
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2011-07690

Dear Ms. Perry:

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# 419845.

The Frisco Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency ("TEA") for information pertaining to a named district employee. You state the district will release some information to the requestor. You have redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that portions of the submitted information are excepted from disclosure under sections 552.102, 552.107,

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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 FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

552.117, 552.137, and 552.147 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

We note TEA's request states 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.³ Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving 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.

Id. § 249.14(a), (c). In this instance, the TEA requestor states he is investigating allegations made against the named former district employee 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 that the information at issue is subject to the general right of access afforded to the TEA under section 249.14.

We note a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure). You seek to withhold some of the submitted information under sections 552.102(a), 552.102(b), 552.107(1),

²Although you also raise section 552.101 of the Government Code in conjunction with rule 1.05 of the Texas Disciplinary Rules of Professional Conduct and the attorney-client privilege found in rule 503 of the Texas Rules of Evidence, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Accordingly, we will not address your claim the submitted information is confidential under section 552.101 in conjunction with any of these rules.

³Chapter 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).

552.117, 552.137, and 552.147 of the Government Code.⁴ Those sections are general exceptions to disclosure under the Act, however, 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 submitted information may be withheld under sections 552.102(a) 552.102(b), 552.107(1), 552.117, 552.137, and 552.147. Accordingly, as no further exceptions to disclosure have been raised, the district must release the submitted information in its entirety to this requestor.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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

⁴Section 552.102(a) protects information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *See* Gov't Code § 552.102(a). Section 552.102(b) excepts 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 id.* § 552.102(b). Section 552.107(1) protects information that comes within the attorney-client privilege. *See id.* § 552.107. Section 552.117 excepts 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 timely request confidentiality for the information under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Section 552.137 excepts an e-mail address of a member of the public provided for the purpose of communicating electronically with a governmental body. *See id.* § 552.137(a). Section 552.147 excepts a living person's social security number. *See id.* § 552.147(a).

⁵Because 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.

Ref: ID# 419845

Enc. Submitted documents

c: Requestor
(w/o enclosures)