



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2011

Ms. Meredith L. Hayes
For the Carrollton-Farmers Branch Independent School System
Walsh, Anderson, Brown, Gallegos, and Green, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2011-13293

Dear Ms. Hayes:

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# 429855.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") seeking information pertaining to a named former district employee. You state some responsive information will be released to the requestor. You state the district has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ 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

¹The 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Code § 552.101. This exception encompasses information made confidential by statute. Section 552.101 also 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). You do not inform us that subsection 21.048(c-1)(1) or subsection (2) is applicable. Therefore, the information you marked is confidential under section 21.048 of the Education Code.

Section 552.101 also encompasses section 21.355 of the Education Code. Section 21.355(a) provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified at Educ. Code § 21.355(a)). This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In Open Records Decision No. 643 (1996), we determined for purposes of section 21.355, the word “teacher” means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. See ORD 643 at 4. The Third Court of Appeals has concluded that a written reprimand constitutes an evaluation for the purposes of section 21.355 where “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You claim one submitted document is confidential under section 21.355. You provide documentation reflecting the former teacher at issue in the submitted information was required to hold and did hold appropriate classroom teacher certification at the time this document was created. Upon review, we agree this document reflects judgment of a supervisor, sets out a corrective action plan, and provides for further review as well as consequences for failing to meet teaching performance expectations. We agree the document you marked is an evaluation made confidential by section 21.355 of the Education Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Thus, section 552.102(a) excepts only public employees’ birth dates maintained by the employer in an employment context. Upon review, we agree the birth date you marked in the submitted information is subject to section 552.102(a) of the Government Code.

Portions of the remaining information are subject to section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country[.]

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130(a)(1)). Upon review, we agree the driver’s license number you marked is subject to section 552.130 of the Government Code.

Section 552.101 also encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report.

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We note the district is not an agency authorized to conduct an investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct

child abuse investigations). However, some of the submitted information pertains to an investigation of alleged or suspected child abuse by the Carrollton police department (the “department”), which is an agency authorized to conduct investigations under chapter 261. Additionally, a portion of the remaining information reflects it was developed in a child abuse investigation conducted by the Department of Family and Protective Services (“DFPS”). Upon review, we have marked the portions of the submitted information we find are within the scope of section 261.201. We have no indication the department or DFPS has a rule governing the release of this type of information in this instance. Therefore, the information we have marked is confidential under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Section 261.201(a) provides, however, that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a).

We note that section 22.082 of the Education Code constitutes “applicable state law” in this instance. Section 22.082 of the Education Code provides that the TEA “may obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.” Educ. Code § 22.082. In this instance, as noted above, you inform us the submitted information pertains to a criminal investigation file that is considered open. Therefore, we agree the TEA may not obtain “all records contained” in the open investigation file under section 22.082 of the Education Code. However, we must consider whether the TEA may obtain CHRI from the district pursuant to section 22.082 of the Education Code. CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined).

In this instance, the requestor is an investigator with the TEA, which has assumed the duties of the State Board for Educator Certification (the “SBEC”).² The requestor states the TEA is conducting an investigation of an individual who has applied for or currently holds educator credentials. Thus, section 22.082 is an applicable state law in this instance. However, this office cannot determine whether release of the CHRI is consistent with the Family Code. Consequently, if the district determines that release of the CHRI is consistent with the Family Code, the district must release information from the submitted documents to this requestor that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. In that instance, the remainder of the information we have marked is confidential under

²The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

section 261.201 of the Family Code.³ If, however, the district determines that release is not consistent with the Family Code, then all the information we marked is confidential under section 261.201(a) of the Family Code.⁴ *See* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive section 261.201 information); Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986).

With regard to the information subject to sections 21.048 and 21.355 of the Education Code, section 261.201 of the Family Code, and sections 552.102 and 552.130 of the Government Code, we again note that the requestor is a staff investigator with the TEA. The TEA's request states that it is seeking this information under the authority provided to the SBEC by section 249.14 of title 19 of the Texas Administrative Code.⁵ 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 provisions discussed above.

Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 249.14. Section 249.14 provides the following, 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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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⁵Chapter 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).

Id. In this case, the requestor states that he is investigating alleged improper conduct by the named teacher and that he needs to review the requested records to determine whether measures need to be taken against the teacher'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. 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 this section.

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 specifically protects educator certification test results, section 21.355 specifically protects educator evaluations, and section 261.201 of the Family Code specifically protects child abuse or neglect reports or investigative information. Thus, these specific statutes prevail over the 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 sections 21.048 and 21.355 of the Education Code, and section 261.201 of the Family Code.

As noted above, some of the remaining information is subject to sections 552.102(a) and 552.130 of the Government Code. You also assert that some of the remaining information is excepted under section 552.147 of the Government Code.⁶ We also note some remaining information may generally be subject to section 552.117 of the Government Code.⁷ As a general rule, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. Attorney General Opinion DM-146 at 3 (1992); *see also* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Sections

⁶Section 552.147 excepts from disclosure the social security number of a living person. Gov't Code § 552.147.

⁷Section 552.117 excepts from public disclosure the present and former home addresses and telephone numbers, emergency contact information, 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. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

552.102, 552.117, and 552.147 are general exceptions to disclosure under the Act. Therefore, the TEA's statutory right of access under section 249.14 prevails and none of the remaining information may be withheld under section 552.102(a), section 552.117, or section 552.147.

However, because section 552.130 has its own access provision specifically governing release of the motor vehicle record information it protects, it is not a general exception under the Act. *See* Gov't Code § 552.130(b). This access provision in section 552.130 does not apply in this instance. Although section 249.14 generally allows TEA access to information relating to suspected misconduct on the part of an educator, section 552.130 specifically protects certain motor vehicle record information. Thus, we find section 552.130 is more specific than the general right of access in section 249.14. Therefore, notwithstanding the provisions of section 249.14, the district must withhold the information you marked that is excepted from disclosure under section 552.130 of the Government Code.

In summary, the district must withhold the information you have marked under section 552.101 in conjunction with section 21.048 of the Education Code. The district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must also withhold the information you have marked under section 552.130 of the Government Code. If the district determines that release of the submitted CHRI is consistent with the Family Code, then the CHRI in the documents subject to section 261.201 of the Family Code must be released, but the district must withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, the district determines that release of the CHRI at issue is not consistent with the Family Code, then the district must withhold all of the information we marked under section 552.101 in conjunction with section 261.201 of the Family Code. The district must release the remaining information to the TEA pursuant to section 249.14 of Title 19 of the Texas Administrative Code.⁸

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

⁸Because 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.

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 'Bob Davis', written in a cursive style.

Bob Davis
Assistant Attorney General
Open Records Division

RSD/agn

Ref: ID# 429855

Enc. Submitted documents

c: Requestor
(w/o enclosures)