



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Ms. Kelly J. Shook
Counsel for the Mission Consolidated Independent School District
Schwartz & Eichelbaum Wardell Mehl and Handson, P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2011-13781

Dear Ms. Shook:

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# 431366.

The Mission Consolidated Independent School District (the "district"), which you represent, received a request for from the Texas Education Agency ("TEA") for information relating to a named individual. You state you have released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), .301(e)(1)(D). This office has issued previous determinations authorizing governmental bodies to withhold certain types of information without the necessity of requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (establishing criteria for previous determinations). You do not assert, however, nor does our review of our records indicate, you have been authorized to withhold the date of birth of an individual you have redacted without seeking a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673. As such, this type of information must be submitted in a manner

that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301.

Section 552.130 of the Government Code excepts from disclosure information that relates to 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). Accordingly, the copies of the employee's driver's license you seek to withhold generally are excepted from disclosure under section 552.130 of the Government Code.

We next note, and you acknowledge, 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.¹ 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) 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. 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 section 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). You also assert portions of the submitted information are excepted from disclosure under sections

¹The 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.

552.102(a) and 552.117 of the Government Code.² However, these sections are general exceptions to disclosure under the Act. Therefore, TEA's statutory right of access under section 249.14 prevails and none of the submitted information may be withheld under section 552.102(a) or section 552.117. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exception to disclosure under the Act).

We 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 motor vehicle record information. Further, section 552.130 specifically

²Section 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 552.117 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. *Id.* § 552.117.

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 copies of the employee's driver's license under section 552.130. 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).

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

Ref: ID# 431366

Enc. Submitted documents

c: Requestor
(w/o enclosures)