



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2011

Ms. Kelly J. Shook
Schartz & Eichelbaum
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2011-13803

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# 431367.

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

We first note information has been redacted from the submitted documents. 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 information is subject to a previous determination issued by this office or to a specific provision of law that expressly allows for the redaction of information without the necessity of requesting a decision. *See* Gov't Code § 552.301(a), (e)(1)(D), (e)(2). The redacted information includes the named individual's social security number, home address, and home telephone number, which the district is authorized to redact without requesting a decision from this office pursuant to section 552.024(c) of the Government Code. *See id.* § 552.024(c). Likewise, section 552.130 of the Government Code now allows a governmental body to redact a driver's license number without the necessity of seeking a decision from the attorney general. Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code

§ 552.130(c)). However, you seek a ruling on the applicability of sections 552.117 and 552.130. Redaction of information on which you seek an attorney general ruling is not appropriate. *See* Gov't Code § 552.301(a), (e)(1)(D), (e)(2). You also state the district redacted the named individual's date of birth under section 552.102(a) of the Government Code pursuant to the court's ruling in *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). However, that ruling does not authorize the district or any other governmental body to withhold such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Thus, dates of birth, along with the information on which the district seeks a determination, 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. However, in the future, failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

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." *Id.* § 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*, 2010 WL 4910163. Thus, we find the submitted date of birth is confidential under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 of the Government Code. 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)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You provide documentation reflecting the named individual elected to keep his home address, home telephone number, social security number, and family member information confidential. Thus, we agree this individual's home address, home telephone number, and social security number are confidential under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides 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 is excepted from disclosure. 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)). Thus, the motor vehicle record information we have marked is subject to section 552.130 of the Government Code.

You acknowledge the TEA's request states that 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.¹ Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits the TEA to obtain the information that is otherwise protected by sections 552.102, 552.117, and 552.130 of the Government Code.

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 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.

19 T.A.C. § 249.14. In this instance, the TEA requestor states that he is investigating alleged improper conduct by the named individual and needs to review the requested records to determine whether measures need to be taken against the employee'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, as noted above, portions of the submitted information are subject to sections 552.102(a), 552.117(a)(1), and 552.130 of the Government Code. Therefore, we find that there is a conflict between those exceptions and the right of access afforded to TEA investigators under section 249.14. 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 552.102(a) and 552.117 of the Government Code are general exceptions to disclosure under the Act. Therefore, the TEA's statutory right of access under section 249.14 prevails over those sections. Thus, the named

¹Chapter 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).

individual's home address, home telephone number, social security number, and date of birth must be released to this requestor.

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 the 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. *See id.* § 311.026(b) (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision). Therefore, notwithstanding the provisions of section 249.14, the district must withhold the information we marked that is excepted from disclosure under section 552.130 of the Government Code. The remaining information must be released, unredacted, to the TEA pursuant to section 249.14 of Title 19 of the Texas Administrative Code.²

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/akg

²Because 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# 431367

Enc. Submitted documents

c: Requestor
(w/o enclosures)