



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 17, 2011

Ms. Andrea Sheehan
Ms. Elizabeth Donley Nelson
The Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2011-15032

Dear Ms. Sheehan and Ms. Nelson:

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# 433132.

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") for six categories of information relating to a named current or former employee of the district, including identification information; contact information; information pertaining to reprimands or disciplinary actions "relating to allegations of educator misconduct or criminal history" while the individual was employed by the district; any documents relating to allegations of educator misconduct or criminal history; and all employment documents, excluding "performance evaluations under the Performance Development Appraisal System or other authorized appraisal system[.]" You state some of the requested information has been or will be released to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state Exhibit E, which you have marked, is not responsive to the instant request for information because it consists of performance evaluations under the Performance Development Appraisal System or other authorized appraisal system, which the requestor has specifically excluded from the scope of the requested information. This ruling does not

address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

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. This section encompasses information protected by other statutes, such as section 21.048 of the Education Code, which addresses teacher certification examinations. Subsection 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 argue Exhibit B contains teacher certification examination results. You state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Therefore, the district must generally withhold the information you have marked within Exhibit B under section 552.101 in conjunction with subsection 21.048(c-1) of the Education Code.

As noted above, in this instance, the requestor is a staff investigator with the TEA. The requestor states she 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. 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) 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.

19 T.A.C. § 249.14(a), (c). The TEA requestor states she is investigating alleged improper conduct by or criminal history information of the named employee, which could warrant disciplinary action relating to that person's educator certification. Thus, we find the submitted responsive information is generally subject to the right of access afforded to the TEA under section 249.14. However, because the marked information within Exhibit B is specifically protected from public disclosure by section 21.048 of the Education Code, we find there is a conflict between this statute and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

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 the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator. However, subsection 21.048(c-1) of the Education Code specifically protects teacher certification examination results. Section 21.048 of the Education Code specifically permits release in certain circumstances that do not include the TEA investigator's request in this instance. Thus, subsection 21.048(c-1) of the Education Code prevails over the general TEA right of access. Therefore, notwithstanding the provisions of section 249.14, the district must withhold the information you marked within Exhibit B under section 552.101 of the Government Code in conjunction with subsection 21.048(c-1) of the Education Code.

You also assert some of the remaining responsive information is excepted under sections 552.102, 552.117, and 552.147 of the Government Code. However, these sections are general exceptions to disclosure under the Act and do not have their own release provisions. Therefore, the TEA's statutory right of access under section 249.14 of the Education Code prevails and none of the remaining responsive information may be withheld under section 552.102, section 552.117, or section 552.147 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

In summary, the district must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with subsection 21.048(c-1) of the Education Code. The remaining responsive information must be released pursuant to section 249.14 of the Texas Administrative Code.

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,

A handwritten signature in cursive script, appearing to read "Claire Morris Sloan".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/agn

Ref: ID# 433132

Enc. Submitted documents

c: Requestor
(w/o enclosures)