



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2011

Mr. Fortunato G. Paredes
For the United Independent School District
Escamilla, Poneck & Cruz, L.L.P.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2011-19110

Dear Mr. Paredes:

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# 440989.

The United 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 has been made available to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA") does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally

¹A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.² However, we will consider your arguments against disclosure of portions of the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act], 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) (defining “abuse” 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 district’s 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 Texas Department of Family and Protective Services. Upon review, we have marked the portions of the submitted information we find are within the scope of section 261.201. Therefore, the information we have marked is generally confidential under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

²In the future, if the district does obtain parental or an adult student’s consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

We note the requestor, the TEA, seeks access to the information at issue 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.³ 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 section 261.201 of the Family Code. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure).

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. § 249.14. Section 249.14 provides, in relevant part, the following:

(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(a), (c). In this case, the requestor states that he is investigating alleged educator misconduct or criminal history information of the named teacher and that he needs to review the requested records to conduct a complete investigation. Thus, we find the submitted information is subject to the general right of access afforded to the TEA under section 249.14. However, because the information we have marked is specifically protected from public disclosure by section 261.201 of the Family Code, as discussed above, we find there is a conflict between this statute and the right of access afforded to the TEA under section 249.14.

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 the TEA access to information relating to suspected

³The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to TEA, effective September 1, 2005. Chapter 21 of the Education Code authorizes the 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 the 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 the SBEC to "adopt rules as necessary for its own procedures." *Id.* § 21.041(a).

misconduct on the part of an educator, section 261.201 of the Family Code specifically protects child abuse or neglect reports or investigative information. This section specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Thus, the specific protection of section 261.201 prevails over the general right of access of the TEA. We therefore conclude the TEA does not have a right of access under section 249.14 to the information we have marked.

However, section 261.201 of the Family Code also provides that information encompassed by subsection (a) may be disclosed "for purposes consistent with [the Family Code] and applicable federal or state law." Fam. Code § 261.201(a). In this instance, section 22.082 of the Education Code constitutes "applicable state law." Section 22.082 provides 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 [of the Education Code]." Educ. Code § 22.082. CHRI consists of "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); *see also id.* §§ 411.0901 (TEA is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) relating to certain employees of schools), .090 (SBEC) is entitled to obtain CHRI from DPS about a person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code), .087(a)(2) (agency entitled to obtain CHRI from DPS also authorized to "obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]"); *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 later statute, later use of term is same as previously defined).

As noted above, the requestor states he is investigating alleged educator misconduct or criminal history information of the named teacher. You do not state, and the submitted information does not reflect, the department's criminal investigation is closed. Thus, as the information at issue relates to a holder of a certificate issued under subchapter B, Chapter 21 of the Education Code, we find section 22.082 of the Education Code gives the TEA a statutory right of access to any CHRI regarding the named individual. *See* Educ. Code § 22.082.

However, section 261.201(a) states the release must be "for purposes consistent with the Family Code." *See* Fam. Code § 261.201(a). This office cannot determine whether release of the information is consistent with the Family Code. Consequently, if the district determines that release of CHRI is consistent with the Family Code, then the district must release information from the documents we have marked 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 event, the district must withhold the rest of the marked information 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 is not consistent with purposes of the Family Code, the district must withhold the marked information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. See *id.* § 261.201(b)-(g), (i), (k) (listing circumstances under which section 261.201 information can be released); 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).

We note portions of the remaining information, which we have marked, are subject to section 552.130 of the Government Code.⁴ Section 552.130 excepts from public release information relating to a motor vehicle operator's license or driver's license issued by an agency of this state or another state or country. Gov't Code § 552.130(a)(1). Upon review, we find the driver's license number we have marked is generally confidential under section 552.130.

Because some of the requested information is specifically protected from public disclosure by section 552.130 of the Government Code, we find there is a conflict between this section and the right of access afforded to TEA investigators under section 249.14. As noted above, 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 *id.* § 311.026(b); *City of Lake Dallas*, 555 S.W.2d at 168. Although section 249.14 generally allows the 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 and has its own release provisions. Thus, section 552.130 prevails over the TEA's general right of access. We therefore conclude that, notwithstanding the provisions of section 249.14 of the Texas Administrative Code, the district must withhold the driver's license number we have marked under section 552.130 of the Government Code.

You assert portions of the remaining information are excepted from disclosure under sections 552.102(b) and 552.117 of the Government Code.⁵ However, these sections are

⁴The 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).

⁵Section 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 Gov't Code § 552.102(b). 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

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(b) 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).

In summary, if the district determines that it is consistent with the Family Code to release CHRI to this requestor in this instance, with the exception of any CHRI, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district determines that it is not consistent with the Family Code to release CHRI to the requestor in this instance, the district must withhold the information we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold the driver's license number we have marked under section 552.130 of the Government Code. The district must release the remaining information.⁶

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/agn

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)).

⁶Because 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 another request for the same information from a different requestor without such a right of access.

Ref: ID# 440989

Enc. Submitted documents

c: Requestor
(w/o enclosures)