



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 3, 2012

Ms. Laura Rodriguez McLean
Walsh, Anderson, Gallegos, Green and Trevino P.C.
P.O. Box 168046
Irving, Texas 75016

OR2012-04788

Dear Ms. McLean:

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# 449459.

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 identity information, contact information, disciplinary information, employment information, and any other information relevant to a misconduct investigation pertaining to a named individual. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor has specifically excluded from her request a specified social security number. Thus, this information, which we have marked, is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release any such 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 Code § 552.101. This section encompasses information protected by statutes. Section 261.201 of the Family Code provides in part as follows:

(a) [T]he 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; and
- (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 id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261). You claim document AG-0001 consists of a communication regarding alleged or suspected child abuse with the Texas Department of Family and Protective Services (“DFPS”) under chapter 261 of the Family Code. We note, although the district is not an agency authorized to conduct an investigation under chapter 261, DFPS is an authorized agency. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we agree document AG-0001 is subject to chapter 261. Thus, the district must generally withhold document AG-0001 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

Section 552.101 also encompasses 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 state document AG-0002 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 we have marked 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 an investigator with the TEA. The requestor states she is seeking this information under the authority provided to the State

¹As our ruling is dispositive for this information, we need not address your remaining arguments against disclosure.

Board for Educator Certification (“SBEC”) by section 249.14 of title 19 of the Texas Administrative Code.² 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 individual’s educator certification. Thus, we find the responsive information is generally subject to the right of access afforded to the TEA under section 249.14. However, because document AG-0001 is specifically protected from public disclosure by section 261.201 of the Family Code and a portion of document AG-0002 is specifically protected by section 21.048 of the Education Code, we find there is a conflict between these statutes and the right of access afforded to the 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. Section 261.201 of the Family Code specifically protects child abuse or neglect reports or investigative information, and only permits the release of information to certain parties and in certain circumstances, which do not include the TEA’s request in this instance. Section 21.048 of the Education Code also specifically protects teacher certification examination results and only permits the release of this

²The 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).

information in certain circumstances, which do not include the TEA investigator's request in this instance. Thus, the specific protections of sections 261.201 of the Family Code and subsection 21.048(c-1) of the Education Code prevail over the general right of access of the TEA. Accordingly, the TEA does not have a right of access under section 249.14 to the information at issue. Therefore, notwithstanding the provisions of section 249.14, the district must withhold document AG-0001 under section 552.101 in conjunction with section 261.201 and the information we have marked in document AG-0002 under section 552.101 in conjunction with subsection 21.048(c-1).

In summary, the district must withhold document AG-0001 under section 552.101 in conjunction with section 261.201 of the Family Code and the information we have marked in document AG-0002 under section 552.101 in conjunction with subsection 21.048(c-1) of the Education Code. The remaining responsive information must be released.

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 449459

Enc. Submitted documents

c: Requestor
(w/o enclosures)