



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2012

Ms. Andrea Sheehan
For Carrollton Farmers Branch Independent School District
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2012-07485

Dear Ms. Sheehan:

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# 454187.

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 all information regarding a specified district employee. You state some of the requested information has been or will be released to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions 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 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.¹

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

¹As our ruling is dispositive, we need not address your argument against disclosure of this information.

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. The submitted information does not indicate subsections 21.048(c-1)(1) and (2) are applicable in this instance. Therefore, the information you have marked in Exhibit B must generally be withheld under section 552.101 of the Government Code in conjunction with subsection 21.048(c-1) of the Education Code.

Section 552.101 of the Government Code also encompasses section 22.08391 of the Education Code. Section 22.08391(a) provides in relevant part:

(a) Information collected about a person to comply with this subchapter, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records:

- (1) may not be released except:
 - (A) to comply with this subchapter;
 - (B) by court order; or
 - (C) with the consent of the person who is the subject of the information;
- (2) is not subject to disclosure as provided by [the Act]; and
- (3) shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

Educ. Code § 22.08391(a). Thus, except in the specified circumstances, section 22.08391 prohibits the release of information about a person collected in order to conduct a criminal

history record search. *Id.* You claim Exhibit D is confidential under section 22.08391. Exhibit D contains information the district collected about the named employee for purposes of conducting a criminal history record search. Accordingly, we conclude Exhibit D must generally be withheld under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code.²

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.

Id. § 249.14(a), (c). The requestor states she is investigating criminal history or allegations of misconduct 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, and the information in Exhibit D is specifically excepted from public disclosure by section 22.08391 of the Education Code, we find there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

Where general and specific statutes 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 misconduct on the part of an educator, section 21.048 of the Education Code specifically

²As our ruling for this information is dispositive, we need not address your remaining argument against its disclosure.

protects teacher certification exam results and section 22.08391 of the Education Code specifically protects information collected to conduct criminal history records searches of school district employees and volunteers. These sections specifically permit release to certain parties and in certain circumstances that do not include the TEA's request in this instance. We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information you marked in Exhibit B under section 552.101 of the Government Code in conjunction with subsection 21.048(c-1) of the Education Code and the information in Exhibit D under section 552.101 of the Government Code in conjunction with section 22.08391(a) of the Education Code.

You assert that some of the remaining information is excepted under sections 552.102 and 552.137 of the Government Code.³ However, these sections are general exceptions to disclosure under the Act. Therefore, the TEA's statutory right of access under section 249.14 prevails and none of the remaining information may be withheld under sections 552.102 and 552.137. *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). Further, although you assert some of the remaining information is excepted under section 552.101 in conjunction with common-law privacy, a statutory right of access generally prevails over the common-law.⁴ *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy. Therefore, the TEA has a right of access to the remaining information pursuant to section 249.14 of title 19 of the Texas Administrative Code. *See* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

In summary, the district must withhold the information you have marked in Exhibit B under section 552.101 in conjunction with subsection 21.048(c-1) of the Education Code and the information in Exhibit D under section 552.101 of the Government Code in conjunction with section 22.08391(a) of the Education Code. The district must release the remaining

³Section 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 552.137 excepts an e-mail address of a member of the public provided for the purpose of communicating electronically with a governmental body. *See id.* § 552.137(a).

⁴Common-law privacy protects information if: (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

information to the TEA requestor pursuant to section 249.14 of title 19 of the Texas Administrative Code.⁵

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/dls

Ref: ID# 454187

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵Because the TEA has a right of access to certain information in these 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.