



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2012

Ms. Andrea Sheehan and Ms. Elisabeth D. Nelson
Counsel for the Carrollton Farmers Branch ISD
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2012-08539

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# 455391.

The Carrollton Farmers Branch Independent School District (the "district"), which you represent, received a request from the Texas Education Agency (the "TEA") for information pertaining to a named individual. You state some of the information has been or will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 exception encompasses information that other statutes make confidential, such as section 21.355 of the Education Code. Section 21.355 provides in part "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher. Open Records Decision No. 643 (1996). This office has also concluded that a teacher is someone who is required to hold, and does hold, a certificate or permit required under chapter 21 of the Education Code, and is teaching at the time of his or her evaluation. *Id.* In addition, the

Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbot v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You assert the information in Exhibit C consists of a teacher evaluation and letters of reprimand regarding the named individual. You state the named individual held a teacher’s certificate under chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. However, we note the information at issue pertains to the named individual’s duties as a coach. Upon review, we find you have failed to demonstrate Exhibit C constitutes teacher evaluations subject to section 21.355 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis. *See* Educ. Code § 21.353 (teachers shall be appraised only on basis of classroom teaching performance and not in connection with extracurricular activities).

Section 552.101 of the Government Code also encompasses criminal history record information (“CHRI”). Chapter 411 authorizes the Texas Department of Public Safety (“DPS”) to compile and maintain CHRI from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. *See* Gov’t Code §§ 411.042, .087.

In 2007, the Legislature enacted section 411.0845 of the Government Code, which provides in relevant part:

(a) [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or

(2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to [DPS] or the Federal Bureau of Investigation.

...

(d) [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

Id. § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part, “[a] school district . . . is entitled to obtain from [DPS CHRI] maintained by [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from DPS’s electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states any CHRI received by a school district is subject to section 411.097(d) of the Government Code. *Id.* § 22.08391(d). Section 411.097 provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

(1) may not be released to any person except:

(A) the individual who is the subject of the information;

(B) the [TEA];

(C) the State Board for Educator Certification;

(D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or

(E) by court order[.]

Gov’t Code § 411.097(d). You assert the information you have marked in Exhibit B was obtained from DPS in accordance with chapter 22 of the Education Code. Based on your representations, we conclude the information at issue constitutes CHRI for the purposes of chapter 411. Accordingly, the district must generally withhold this information under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code. *See* Gov’t Code § 411.097; *see also* Educ. Code § 22.08391(d) (stating CHRI received by school district under subchapter C of chapter 22 of Education Code is subject to section 411.097(d) of Government Code).

However, the requestor is an investigator for the TEA. Section 411.097(d) governs the release of CHRI by a school district. Pursuant to section 411.097(d)(1)(B), the TEA is

authorized to obtain from the district the CHRI the district obtained from DPS's electronic clearinghouse. *Id.*; *see also* Educ. Code § 22.08391(d); Gov't Code § 411.0901 (the TEA entitled to obtain CHRI from DPS on certain school employees or applicants for employment). Therefore, this CHRI obtained pursuant to section 411.0845 is subject to release to this requestor under section 411.097(d)(1)(B). Therefore, the CHRI you have marked in Exhibit B must be released to this requestor in its entirety.

Next, we consider your claim under section 22.08391 of the Education Code for the remaining information in Exhibit B. 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;

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. You state the remaining information in Exhibit B is confidential under section 22.08391. The remaining information in Exhibit B contains information the district collected about the named individual for purposes of conducting a criminal history record search. Accordingly, we conclude the remaining information in Exhibit B must generally be withheld under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code.

Section 552.130 provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1), (2). Accordingly, the district must generally withhold the motor vehicle record information you have marked under section 552.130 of the Government Code.

We note the TEA's request states 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 information that is otherwise protected by the exceptions discussed above. *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 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 [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). In this instance, the requestor states he is investigating allegations made against the individual at issue and that he needs to review the requested records to determine whether measures need to be taken against this person'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, because some of the requested information is specifically protected from public disclosure by section 22.08391 of the Education Code and section 552.130 of the Government Code, we find there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14.

We note 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

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).

suspected misconduct on the part of an educator, section 22.08391 of the Education Code specifically protects information collected to conduct criminal history records searches of school district employees and volunteers and section 552.130 of the Government Code specifically protects motor vehicle record information and has its own release provisions. 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 of the Texas Administrative Code, the district must withhold the remaining information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 22.08391(a) of the Education Code and the motor vehicle information you have marked under section 552.130 of the Government Code.

You also assert portions of the remaining information are excepted from disclosure under sections 552.102(a), 552.102(b), 552.117, 552.137, and 552.147 of the Government Code.² 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 submitted information may be withheld under section 552.102(a), section 552.102(b), section 552.117, section 552.137, or section 552.147. *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, the district must withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 22.08391(a) of the Education Code and the information you have marked under section 552.130 of the Government Code. The district must release the remaining information.³

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.

²Section 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 552.102(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 id.* § 552.102(b). Section 552.117 excepts from public disclosure 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. *Id.* § 552.117(a)(1). 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). Section 552.147 excepts a living person's social security number. *See id.* § 552.147(a).

³Because 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.

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 black ink, appearing to read 'NK' with a large flourish.

Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 455391

Enc. Submitted documents

c: Requestor
(w/o enclosures)