



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2012

Ms. Leila Feldman
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2012-09829

Dear Ms. Feldman:

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# 457211.

The Fort Bend Independent School District (the "district") received two requests for personnel records and information pertaining to educator misconduct on the part of a named former district teacher. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have submitted information that is not responsive to the requests as it does not consist of personnel records or information pertaining to the named former teacher's misconduct. We have marked this non-responsive information. The district need not release non-responsive information in response to the requests, and this ruling will not address that 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."¹ Gov't Code § 552.101. This section encompasses information protected by statutes, such as section 261.201 of the Family Code. Section 261.201(a) provides as follows:

¹The 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).

(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.

Id. § 261.201(a); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). We note the responsive information was used or developed in investigations of child abuse by the district’s police department (the “department”). Although the district is not an agency authorized to conduct an investigation under chapter 261, the department is an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). You do not indicate the department has adopted a rule that governs the release of this type of information. Thus, we assume no such regulation exists. Given that assumption, we conclude the responsive information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

In this instance, the first requestor is an investigator with the Texas Education Agency (the “TEA”) and the second requestor is the attorney for the named former teacher. Thus, the district must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code from the second requestor. However, 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.² 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.

²The 79th Texas legislature passed House Bill 1116, which required the transfer of the SBEC’s administrative functions and services to the 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).

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 TEA requestor states that he is investigating alleged educator misconduct or criminal history information of the named former teacher and that he needs to review the requested records to conduct a complete investigation. This requestor also states the alleged misconduct or criminal history information could warrant disciplinary action relating to the former teacher' educator certification. 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 responsive information 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 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.). Section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator that would warrant the SBEC denying relief to or taking disciplinary action against the person or certificate. *See* 19 T.A.C. § 249.14(a). However, section 261.201 of the Family Code specifically protects child abuse or neglect reports or investigative information. Additionally, section 261.201 specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. *See* 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). Thus, the specific protection afforded by 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 responsive information.

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 TEA requestor states he is investigating alleged educator misconduct or criminal history information of the named former teacher. You state the responsive information relates to open criminal investigations of the department. Thus, as these investigations relate to the former teacher, 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 from the responsive documents. *See* Educ. Code § 22.082.

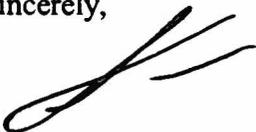
However, section 261.201(a) states the release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office cannot determine whether release of the information is consistent with the Family Code. Consequently, if the district determines that release of CHRI is consistent with the Family Code, then the district must release information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you also raise section 552.108 of the Government Code for the responsive information, a specific access provision prevails over the general exceptions found in the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure). In that event, the district must withhold the rest of the responsive information from the TEA 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 responsive information in its entirety from the TEA pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

In summary, the district must withhold the responsive information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code from the second requestor. If the district determines that release of CHRI is consistent with the Family Code, then the district must release CHRI and withhold the rest of the responsive information from the TEA under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district determines that release is not consistent with the Family Code, then the district must also withhold the responsive information in its entirety from the TEA under section 552.101 of the Government Code in conjunction with section 261.201 of the Family 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 457211

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)