



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 16, 2012

Ms. LeAnne Lundy  
Counsel for Klein Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2012-12916

Dear Ms. Lundy:

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# 462195.

The Klein Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for five categories of information pertaining to a named former employee of the district. You state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 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. You seek to withhold criminal history information obtained from the Safe Schools Project under section 552.101 in conjunction with the federal Fair Credit Reporting Act (the "FCRA"). *See* 15 U.S.C. § 1681 *et seq.* Section 22.083 of the Education Code permits the district to obtain criminal history record information from a private entity that is a consumer reporting agency governed by the FCRA. *See* Educ. Code § 22.083(a-1)(3). We understand that the Safe Schools Project is a consumer reporting agency that furnishes reports to the district to be used for employment purposes. *See* 15 U.S.C. § 1681a(f) (defining "consumer reporting agency"), (h) (defining "employment purposes"). A criminal

history report compiled by a private consumer reporting agency is a “consumer report” under the FCRA. *See id.* § 1681a(d) (defining “consumer report”). Section 1681b of the FCRA permits a consumer reporting agency to furnish a consumer report to a person that the consumer reporting agency has reason to believe intends to use the information for employment purposes. *See id.* § 1681b(a)(3)(B); *see also id.* § 1681a(b), (d) (defining “person” and “consumer report”). Section 1681b further provides that “[a] person shall not use or obtain a consumer report for any purpose unless the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; . . . and . . . the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.” *Id.* § 1681b(f)(1)-(2). Section 1681e provides for the maintenance of compliance procedures by consumer reporting agencies under which prospective users of consumer reports must identify themselves, certify the purposes for which they seek information, and certify that the information will be used for no other purpose. *See id.* § 1681e(a); *see also* Open Records Decision No. 373 at 2 (1983) (federal law strictly limits distribution of consumer credit reports by credit reporting agencies). We find the submitted Safe Schools Project records are a consumer report for purposes of section 1681b of the FCRA. We note the FCRA does not permit the disclosure of information in a consumer report for the purpose of responding to a request for information under the Act. We therefore conclude the Safe Schools Project records, which we have marked, are confidential under section 552.101 of the Government Code in conjunction with the FCRA.<sup>1</sup>

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 at 3 (1996). In that opinion, we concluded an administrator is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* In addition, the Third Court of Appeals has held a written reprimand constitutes an evaluation for the 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.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend the letters submitted as Exhibit B are confidential under section 21.355. You state the employee concerned was an administrator who held the appropriate administrator’s certificate and assert the employee was performing the functions of an administrator at the time the information was created. We note the documents at issue consist of three letters, one placing an employee on administrative leave, one notifying the employee the district will

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<sup>1</sup>As our ruling on this information is dispositive, we need not address your argument against its disclosure.

be filing a report with the TEA regarding her alleged conduct, and the other from the district to the TEA regarding the employee's resignation. Upon review, we find you have failed to demonstrate how the information consists of "[a] document evaluating the performance of a teacher or administrator" as contemplated by section 21.355. Educ. Code § 21.355. Accordingly, we conclude the district may not withhold Exhibit B based on section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note the TEA's request states it is seeking the requested 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.<sup>2</sup> 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 the following 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). In this instance, the TEA requestor states she is investigating allegations made against the named former employee of the district and needs to review the requested records to determine whether disciplinary action needs to be taken against this person's 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 some of the submitted information is specifically protected from public disclosure by the FCRA, we find there is a conflict between this statute and the right of access afforded to TEA investigators under section 249.14.

As previously discussed, the marked Safe Schools Project records are confidential under the FCRA. As federal law, the FCRA preempts any conflicting provisions of state law, including section 249.14 of the Texas Administrative Code. *See Equal Employment*

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<sup>2</sup>The 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 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 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).

*Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law). Therefore, notwithstanding section 249.14 of the Texas Administrative Code, the district must withhold the marked Safe Schools Project records under section 552.101 in conjunction with the FCRA.

We note a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure). You seek to withhold portions of the remaining information under section 552.102 of the Government Code.<sup>3</sup> Additionally, you state the district intends to redact portions of the requested information under section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code and under section 552.147(b) of the Government Code.<sup>4</sup> 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 section 552.102, section 552.117, 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.

In summary, the district must withhold the marked Safe Schools Project records under section 552.101 of the Government Code in conjunction with the FCRA. The remaining information must be released to the TEA pursuant to section 249.14 of title 19 of the Texas Administrative Code.<sup>5</sup>

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.

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<sup>3</sup>Section 552.102(a) of the Government Code 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).

<sup>4</sup>Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147.

<sup>5</sup>Because 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 a request for this 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](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 cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the typed name.

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 462195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)