ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2013

Ms. Paige C. Kyle
Counsel for the Northside Independent School District
Walsh, Anderson, Gallegos, Green & Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2013-02459

Dear Ms. Kyle:

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# 478605.

The Northside Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for specified information pertaining to a named individual. You inform us the district will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the TEA. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. You acknowledge, and we agree, the district failed to comply with the procedural requirements of sections 552.301(b) and (e). *See id.* § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.);

Hancock v. State Bd. of Ins., 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information from disclosure, we will consider its applicability to the information at issue.

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 other statutes make confidential. Section 261.201 of the Family Code, provides, in relevant part, as follows:

> (a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). You assert the information you have marked is confidential under section 261.201. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of Family Code); *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 district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, upon review, we find the information you have marked, and the additional information we have marked, consists of reports of alleged child abuse made to the Child Protective Services Division of the Texas Department of Family and Protective Services and the Northside Independent School District Police Department, or the identity of the person making such reports. *See id.* Therefore, the marked information is confidential pursuant to section 261.201(a)(1) of the Family Code and the district must generally withhold this information under section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

As noted above, the requestor identifies himself as an investigator with the TEA. The investigator's request states he is seeking the requested information 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. 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. § 249.4. 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.

See id. § 249.14(a), (c). The requestor explains he is investigating alleged educator misconduct or criminal history information of the named individual and he needs to review the marked information to conduct a complete investigation. The requestor also informs us the alleged misconduct or criminal history information could warrant disciplinary action relating to the named individual's educator certification. Thus, we find the marked information is subject to the general right of access afforded to the TEA under section 249.14. However, because this information is protected from public disclosure by section 261.201(a)(1) of the Family Code, we find there is a conflict between this statute and the right of access afforded to TEA investigators under section 249.14.

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 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 provides the TEA staff may obtain and investigate information concerning alleged improper conduct by 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(a)(1) specifically protects a report made under chapter 261 of the Family Code and the identity of the person making the report. *See* Fam. Code § 261.201(a)(1). Section 261.201 specifically permit release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Accordingly, notwithstanding section 249.14, the district must withhold the information you and we have marked under section 552.101 of the Government Code in conjunction with

section 261.201(a)(1) of the Family Code.[1] The district must release the remaining information.

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,

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 478605

Enc. Submitted documents

c: Requestor
(w/o enclosures)

[1]As our ruling is dispositive, we need note address your remaining arguments against disclosure.