



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 12, 2013

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

OR2013-09874

Dear Ms. Rincon:

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# 490733 (ORR# 2012-13-413).

The Fort Bend Independent School District (the "district") received a request for information pertaining to a named current or former district employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 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 public 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. Section 261.201(a) of the Family Code provides 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 submitted as Exhibit B relates to an investigation conducted under chapter 261 of the Family Code. We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, a portion of the information at issue pertains to an investigation of alleged or suspected abuse conducted by the district's police department (the "department"), which is an agency authorized to conduct investigations under chapter 261. *See id.* § 261.001(1), (4) (defining "abuse" for purposes of chapter 261 of the Family Code). Further, the remainder of Exhibit B consists of an investigation of alleged abuse of a child by the Child Protective Services Division of the Texas Department of Family and Protective Services. Accordingly, Exhibit B is generally confidential under section 261.201(a) of the Family Code.

However, in this instance, the requestor is a staff investigator with the TEA. 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. 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.

19 T.A.C. § 249.14(a), (c). The TEA requestor states she is investigating alleged improper conduct by or criminal history information regarding the named teacher, which could warrant disciplinary action relating to that person's educator certification. Thus, we find the information at issue is generally subject to the right of access afforded to the TEA under section 249.14. However, because Exhibit B is specifically protected from public disclosure by section 261.201 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 of the Texas Administrative Code.

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); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator. However, section 261.201 of the Family Code specifically protects child abuse or neglect investigative information. Section 261.201 of the Family Code specifically permits release to certain parties and in certain circumstances that do not include the TEA investigator's request in this instance. Thus, section 261.201 of the Family Code prevails over the general TEA right of access and, notwithstanding the provisions of section 249.14, the TEA does not have a right of access under section 249.14 to the information in Exhibit B.

However, section 261.201 of the Family Code also provides 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 [14<sup>th</sup> 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 requestor states she is investigating alleged educator misconduct or criminal history information of the named individual. You state the submitted information is related to a pending criminal investigation by the department. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. *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. Therefore, if the district determines the release of CHRI is consistent with the Family Code, then the district must release information from Exhibit B 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 Exhibit B, 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 Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the district determines the release of CHRI is not consistent with the Family Code, then Exhibit B must be withheld from the requestor in its entirety under section 552.101 in conjunction with section 261.201(a). *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); *see also* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive information under section 261.201 of the Family Code).

You seek to withhold Exhibit C under section 552.107 of the Government Code. We note section 552.107 is a general exception to disclosure under the Act and does not have its own release provision. Therefore, the TEA's statutory right of access under section 249.14 of the Texas Administrative Code prevails and none of the information at issue may be withheld under section 552.107 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451. Therefore, Exhibit C must be released to this requestor in its entirety.

In summary, if the district determines release of CHRI to this requestor is consistent with the Family Code, then with the exception of any CHRI, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and must release CHRI. If the district determines release of CHRI is not consistent with the Family Code, the district must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must release Exhibit C in its entirety to this requestor.<sup>1</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>1</sup>Because the TEA has a right of access to certain information in the submitted documents that would otherwise 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 black ink, appearing to read "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 490733

Enc. Submitted documents

c: Requestor  
(w/o enclosures)