



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

Mr. Robb D. Decker
Counsel for Northside Independent School District
Walsh, Anderson, Gallegos, Green, and Trevino P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2013-13160

Dear Mr. Decker:

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# 494692.

The Northside Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named district employee, including identity information, contact information, disciplinary history and related documents, employment documents, and any other documents that might be relevant to an investigation of educator misconduct. You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You further state that some of the requested information will be released. You claim 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.

¹We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Section 552.101 of the Government Code exempts 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 submitted information 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). Upon review, we find the information at issue contains a report of alleged child abuse made to the Child Protective Services Division of the Texas Department of Family and Protective Services and the identity of the persons making the report. *See id.* Therefore, the information we have marked 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).* However, we find you have failed to demonstrate how the remaining information constitutes a report or the identity of the persons making the report for purposes of section 261.201(a)(1) of the Family Code. Furthermore, we find you have failed to demonstrate how the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Accordingly, the remaining information may not be withheld under section 552.101 in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.101(d) of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See Fam. Code § 261.101 (d).* As noted above, 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). Upon review, we find none of the remaining information contains the identifying information of an individual who made a report under

chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information at issue under section 552.101 in conjunction with section 261.101(d).

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 permits 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 we have marked

under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Cyert", written over a horizontal line.

James D. Cyert
Assistant Attorney General
Open Records Division

JDC/ac

Ref: ID# 494692

Enc. Submitted documents

c: Requestor
(w/o enclosures)