



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2014

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

OR2014-10026

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# 525519 (ORR# 2013-14-647).

The Fort Bend Independent School District (the "district") received a request for information pertaining to a named district employee. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities 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.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). We note

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

FERPA is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your arguments against disclosure of the submitted information.

Next, we note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the district has been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"); *id.* § 552.302. Thus, in the future, the district should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

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:

[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.

Fam. Code § 261.201(a). You assert the submitted information 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 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). Accordingly, this information, which we have marked, is generally confidential under section 261.201(a) of the Family Code. However, we find you have failed to demonstrate how the remaining information constitutes a report or the identity of the persons making a 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, no portion of the remaining information may 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 6103(a) of title 26 of the United States Code. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders federal tax return information confidential. *See Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms).* Section 6103(b) defines the term “return information” as “a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Treasury] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” *See 26 U.S.C. § 6103(b)(2)(A).* Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *aff’d in part*, 993 F.2d 1111 (4th Cir. 1993). Thus, the submitted W-4 forms, which we have marked, constitute tax return information that is confidential under section 6103(a) of title 26 of the United States Code and must generally be withheld under section 552.101 of the Government Code.

We note some of the remaining information is subject to section 552.130 of the Government Code.<sup>2</sup> Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district must generally withhold the motor vehicle record information we have marked under section 552.130 of the Government 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 [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 portions of the submitted information are specifically protected from public disclosure by section 261.201 of the Family Code, section 6103(a) of title 26 of the United States Code, and section 552.130 of the Government Code, we find there is a conflict between these confidentiality statutes and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

As noted above, the marked W-4 forms are confidential pursuant to section 6103(a) of title 26 of the United States Code. As a federal law, section 6103(a) preempts any conflicting state provisions, including section 249.14 of the Texas Administrative Code. *See Equal Employment 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,

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<sup>2</sup>The 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).

notwithstanding section 249.14 of the Texas Administrative Code, the district must withhold the marked W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

With regard to the information subject to section 261.201 of the Family Code and section 552.130 of the Government 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. Further, section 552.130 of the Government Code specifically protects motor vehicle record information and has its own release provisions. These sections specifically permit 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 and section 552.130 of the Government Code prevail 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 at issue, which we marked.

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 information we have marked under section 261.201 of the Family Code 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 the information we marked under section 261.201 of the Family Code 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 this 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 information we marked 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 the district must withhold the information we marked 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).

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, which must be released to this requestor, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district determines release of CHRI is not consistent with the Family Code, the district must withhold the information we marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold the marked W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The district must withhold the motor vehicle record information we marked under section 552.130 of the Government Code. The district must release the remaining information to this requestor.<sup>3</sup>

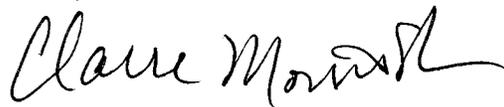
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<sup>3</sup>We note the requestor has a right of access to some of the information being released.

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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 525519

Enc. Submitted documents

c: Requestor  
(w/o enclosures)