



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2014

Ms. Katie E. Payne
Counsel for Natalia Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2014-16985

Dear Ms. Payne:

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# 537284.

The Natalia Independent School District (the "district"), which you represent, received a request for information pertaining to a named former district employee. We understand you have released some of the requested information to the requestor. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception 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."

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

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. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the 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 the disabilities of minority removed for general purposes). 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). Upon review, however, we find some of the submitted information, which we have marked, consists of information used or developed by the district’s police department and Child Protective Services, which are agencies authorized to conduct investigations under chapter 261. Additionally, we find some of the remaining information, which we have marked, consists of identifying information of the person who made a report under chapter 261. We find this information is within the scope of section 261.201(a) of the Family Code. Therefore, the district must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ However, we find you have not established the remaining information consists of a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code, information used or developed in an investigation under chapter 261, or identifying information of the person who made a report under chapter 261. We therefore conclude the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 261.101 of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See id.* § 261.101(d). As noted above, the district is not an agency authorized

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

to conduct a chapter 261 investigation. *See id.* § 261.103. 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 under section 552.101 in conjunction with section 261.101(d).

However, in this instance, the requestor is an investigator with the Texas Education Agency (“TEA”). The requestor states she 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.⁴ 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.

Id. § 249.14 (a), (c). The investigator states the TEA has opened an investigation regarding the alleged educator misconduct of the named employee, and she needs to obtain the requested records in order to conduct a full and complete investigation. The investigator also states the alleged misconduct could warrant disciplinary action relating to the teacher’s educator certification. Thus, we find the information at issue is subject to the general right of access afforded to the TEA under section 249.14. However, because the information we have marked is protected from public disclosure by section 261.201(a) 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.). Although

⁴The 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 the 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 that the 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 the SBEC to “adopt rules as necessary for its own procedures.” *Id.* § 21.041(a).

section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator, section 261.201 of the Family Code specifically protects a report made under chapter 261 and the identity of the person making the report. This section specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Thus, the specific protection of section 261.201 prevails over the general right of access of the TEA. We therefore conclude the TEA does not have a right of access under section 249.14 to the information at issue.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 537284

Enc. Submitted documents

c: Requestor
(w/o enclosures)