



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2006

Ms. Barbara E. Roberts
Chamberlain, Hrdlicka, White, Williams & Martin
1200 Smith Street, Suite 1400
Houston, Texas 77002

OR2006-03875

Dear Ms. Roberts:

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# 246703.

The Katy Independent School District (the "district"), which you represent, received a request for information pertaining to a former district employee. You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information was the subject of a previous ruling issued by this office. In Open Records Letter No. 2006-03485 (2006), this office determined that the district could withhold the submitted information under section 552.103 of the Government Code. Although you indicate that the relevant facts and circumstances have not changed since the issuance of this previous ruling, we note that the requestor in this instance is a staff investigator with the Texas Education Agency ("TEA"). As such, the requestor may have a right of access to the submitted information. Therefore, the facts and circumstances have changed and we must address the requestor's potential right of access to this information.¹

¹A governmental body may rely on a previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

In this case, the requestor states that she is seeking the requested information under the authority provided by section 249.14 of title 19 of the Texas Administrative Code.² Accordingly, we will consider whether this section permits the requestor to obtain information that is otherwise excepted under section 552.103 of the Government Code. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure). Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving the State Board for Educator Certification (“SBEC”). *See* 19 T.A.C. § 249.1. Section 249.14 provides in relevant part:

(a) Staff [of SBEC] 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 executive director and staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify [SBEC] in writing . . . by filing a report with the executive director within seven calendar days of the date the person first obtains or has knowledge of information indicating any of the following circumstances:

(1) that an applicant for or a holder of a certificate has a reported criminal history;

(2) that a certificate holder was terminated from employment based on a determination that he or she committed any of the following acts:

(A) sexually or physically abused a minor or engaged in any other illegal conduct with a minor;

²Chapter 21 of the Education Code authorizes the State Board for Educator Certification 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 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 SBEC to “adopt rules as necessary for its own procedures.” *Id.* § 21.041(a).

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position; or

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event, or;

(3) that a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (2) of this subsection.

...

(e) A report filed under subsection (d) of this section shall, at a minimum, summarize the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; and last known mailing address and home and daytime phone numbers. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.

Id. § 249.14. We note that this statute specifically applies to SBEC. We were unable to determine whether the access provisions of this statute also apply to TEA. Accordingly, we determined that additional information was required to render a decision in this instance and provided written notice of this determination to TEA. *See* Gov't Code § 552.303(b), (c). TEA responded to our request for additional information on April 7, 2006. In that response, TEA states that on September 1, 2005, all of SBEC's employees and administrative functions were transferred to TEA. *See* Educ. Code § 21.035. TEA also asserts that the access provisions of section 249.14 "now [apply] to all TEA employees acting on behalf of SBEC to carry out SBEC's administrative functions." Based on TEA's representations and our review, we agree that the access provisions of section 249.14 are now applicable to TEA and its employees when performing official SBEC duties. In this case, TEA states that the requestor is "conducting an investigation concerning the acts/omissions of a former employee of [the district] as they relate to SBEC's regulation and oversight of the

preparation, certification, continuing education of [a] public school educator, and/or the maintenance and enforcement of standards of conduct of [a] public school educator[.]” Therefore, based on TEA’s representations and our review, we find that the requestor has a right of access to any responsive information which falls under section 249.14(a) and/or (c). See 19 T.A.C. § 249.14(a), (c). The requestor’s right of access under section 249.14(a) and/or (c) prevails over the more general exceptions to disclosure under the Act, including section 552.103 of the Government Code. See Open Records Decision No. 451 at 4. Therefore, the district must release any responsive information subject to section 249.14(a) and/or (c). The district may continue to rely on Open Records Letter No. 2006-03485 for any information which does not fall under section 249.14(a) and/or (c), to the extent such information exists.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 246703

Enc. Submitted documents

c: Mr. Tracy Thomas
Staff Investigator
Office of Investigation
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(w/o enclosures)