



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

July 17, 2006

Ms. Ann Forbes  
Paralegal  
Fort Worth Independent School District  
100 North University Drive  
Fort Worth, Texas 76107

OR2006-07640

Dear Ms. Forbes:

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# 254225.

The Fort Worth Independent School District (the "district") received a request for all information related to a named former teacher. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.116, and 552.135 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 disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The 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 explain that the submitted information consists of a file maintained by the Office of Special Investigations, a division of the district's police department, as a result of its investigation into allegations of child abuse. Because the submitted information was used or developed in an investigation of child abuse, this information is within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* Bv § 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). You have not indicated that the Office of Special Investigations has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is generally confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

We note, however, that the submitted information contains an evaluation of the former teacher at issue. Section 21.352(c) of the Education Code provides that "[e]ach teacher is entitled to receive a written copy of the evaluation on its completion." Educ. Code § 21.352(c). Accordingly, to the extent that the submitted evaluation, which we have marked, is one contemplated in section 21.352 and the requestor is the authorized representative of the former teacher at issue, the requestor has a right of access under section 21.352(c) to the evaluation.

Generally, information used or developed in an investigation of child abuse under chapter 261 of the Family Code must be withheld in its entirety under section 261.201 of the Family Code. Thus, in the event that the requestor has a right of access to the marked teaching evaluation, there is a conflict of laws between section 261.201 and section 21.352(c) of the Education Code. However, where information falls within both a general and a specific statutory provision, the specific provision prevails over the general. *See 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); Open Records Decision Nos. 598 (1991), 583 (1990), 451 (1986). We find that the public availability provision of section 21.352(c) of the Education Code is more specific than the general confidentiality provision in section 261.201 of the Family Code. Thus, section 21.352(c) of the Education Code more specifically governs the public availability of the submitted evaluation and prevails over the more general confidentiality provision of section 261.201. *See Lufkin v. City of Galveston*, 63 Tex. 437 (1885) (when two sections of an act apply, and one is general and the other is specific, then the specific controls); *see also* Gov't Code § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision).

Therefore, to the extent that the marked evaluation is one contemplated in section 21.352 and the requestor has a right of access under section 21.352(c), this evaluation must be released to the requestor.

In summary, if the marked evaluation is one contemplated in section 21.352 of the Education Code and the requestor has a right of access under section 21.352(c) of the Education Code, this evaluation must be released to the requestor. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>1</sup>

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).

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining claims against disclosure.

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 254225

Enc. Submitted documents

c: Ms. Tanya Dawson  
United Educators Association  
4900 S.E. Loop 820  
Fort Worth, Texas 76140  
(w/o enclosures)