



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 10, 2008

Ms. Andrea Sheehan  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2008-09432

Dear Ms. Sheehan:

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# 315295.

The Frisco Independent School District (the "district"), which you represent, received a request for several categories of information pertaining to a named district employee. We note that you have redacted student information pursuant to FERPA.<sup>1</sup> You claim that the submitted personnel records are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 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 protected by other statutes. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of this

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<sup>1</sup>The Department of Education has informed this office that it is the responsibility of the educational agency or institution to make determinations under FERPA. A copy of the Department of Education's letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

form under the Act would be “for purposes other than for enforcement” of the referenced federal provisions. Accordingly, the submitted I-9 form is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You raise section 552.101 in conjunction with section 21.355 of the Education Code for the documents within Exhibit C-2. Section 21.355 provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). Upon review, we agree that the documents submitted as Exhibit C-2 constitute evaluations that are generally subject to section 21.355 of the Education Code.

You assert that some of the submitted information is subject to section 21.048 of the Education Code, which is also encompassed by section 552.101 of the Government Code. This section addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). Upon review, we agree that the submitted information contains teacher certification examination results, which you have highlighted in green. You state that subsections 21.048(c-1)(1) and (2) are not applicable to these reports. Therefore, we find that section 21.048 of the Education Code is generally applicable to the certification examination score results you have highlighted.

You have highlighted information within Exhibit C-4 that you assert is subject to common-law privacy. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus.*

*Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that none of the information you have highlighted within Exhibit C-4 is highly intimate or embarrassing. Accordingly, this information may not be withheld under common-law privacy and section 552.101 of the Government Code.

You assert that some information within the submitted college transcripts, which are labeled Exhibit C-3, is subject to section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). We find that section 552.102(b) of the Government Code is generally applicable to the information you highlighted within Exhibit C-3.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employee whose personal information is at issue timely elected to keep her personal information confidential. Accordingly, we find that section 552.117(a)(1) of the Government Code is generally applicable to most of the personal information you have marked. We note, however, that a post office box number does not constitute a "home address" for purposes of section 552.117. *See generally*, Open Records Decision No. 622 at 4 (1994) (purpose of confidentiality provision excepting public employee's personal information from required disclosure is to protect them from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

You have highlighted information you assert is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the Texas motor vehicle record information you have highlighted is generally subject to section 552.130.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail

address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). The e-mail address at issue is not of a type specifically excluded by section 552.137(c). Therefore, section 552.137 of Government Code is generally applicable to the e-mail address you have marked.

Finally, you state that the district will redact social security numbers pursuant to section 552.147 of the Government Code. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). We agree that the social security numbers within the submitted documents are generally subject to section 552.147 of the Government Code.

We next note that the requestor is a staff investigator with the Texas Education Agency ("TEA"). TEA's request states that 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. § 249.1. Section 249.14 provides the following in relevant part:

(a) Staff [of TEA] 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 board denying relief to or taking disciplinary action against the person or certificate.

19 T.A.C. § 249.1. In this instance, the requestor states that he is investigating alleged improper conduct by the named district employee and that he needs to review the requested records "to determine whether enforcement actions are warranted against [the named employee]." Thus, we find that the information at issue is subject to the general right of access afforded to the TEA under 19 T.A.C. § 249.1. However, because portions of the requested information are protected from public disclosure by the exceptions discussed above, we find that there is a conflict between these exceptions and the right of access afforded to TEA investigators under 19 T.A.C. § 249.1. 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 that 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.App.—Fort Worth 1977, writ ref'd n.r.e.).

In this instance, although section 249.14 generally allows TEA access to information relating to suspected misconduct on the part of an educator, section 1324a of title 8 of the United States Code, sections 21.355 and 21.048 of the Education Code, and section 552.130 of the Government Code specifically protect I-9 forms, educator evaluations, educator certification test results of an individual who did not fail the test more than five times, and Texas motor vehicle record information. These sections also specifically permit release to certain parties

and in certain circumstances that do not include TEA's present request. Because these specific provisions prevail over the general TEA right of access, we conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, sections 21.355 and 21.048 of the Education Code, and section 552.130 of the Government Code. However, sections 552.102(b), 552.117(a)(1), 552.137, and 552.147 of the Government Code are general exceptions to disclosure under the Act. Therefore, we find that TEA's statutory right of access prevails over these general exceptions. See Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, TEA has a right of access to information subject to sections 552.102(b), 552.117(a)(1), 552.137, and 552.147, as well as the remaining information at issue, pursuant to 19 T.A.C. § 249.1.

In summary, the district must withhold Exhibit C-1 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The district must also withhold the information marked under section 552.101 of the Government Code in conjunction with sections 21.355 and 21.048 of the Education Code and section 552.130 of the Government Code. The district must release the remaining information to TEA pursuant to section 249.14 of Title 19 of the Texas Administrative Code.<sup>2</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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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

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<sup>2</sup>Because TEA has a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the district must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.

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 challenge 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 315295

Enc. Submitted documents

c: Mr. Thomas P. Rivera, Investigator  
TEA, Office of Investigations  
1701 Congress Avenue, Suite 5-105  
Austin, Texas 78701  
(w/o enclosures)