



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2011

Ms. Elizabeth Donley Nelson
For the Garland Independent School District
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2011-14948

Dear Ms. Nelson:

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# 433057.

The Garland Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named former district employee. You state some of the information has been or will be released to the requestor. You claim some of the submitted information is 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 552.130 of the Government Code excepts from disclosure "information [that] relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country[.]" Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130(a)(1)). We note that the issuing state of a driver's license is not motor vehicle record information for purposes of section 552.130. Upon review, we find that, with the exception of the issuing state, which we have marked for release, the district must withhold the information you have marked under section 552.130 of the Government Code.

We note 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.¹ Accordingly, we will consider whether section 249.14 permits TEA to obtain information that is otherwise protected by your claimed exceptions. *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 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). In this instance, the TEA requestor states he is investigating allegations made against the named former district employee and that he needs to review the requested records to determine whether measures need to be taken against this person's teaching credentials. Thus, we find that the submitted information is subject to the general right of access afforded to the TEA under section 249.14. However, because some of the requested information is specifically protected from public disclosure by section 552.130 of the Government Code, we find there is a conflict between this section and the right of access afforded to TEA investigators under section 249.14.

We note 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 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. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Although section 249.14 generally allows the TEA access to information

¹Chapter 21 of the Education Code authorizes 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 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).

relating to suspected misconduct on the part of an educator, section 552.130 of the Government Code specifically protects Texas motor vehicle record information and has its own release provisions. Thus, section 552.130 prevails over the TEA's general right of access. We therefore conclude that, notwithstanding the provisions of section 249.14 of the Texas Administrative Code, the district must withhold the information that is excepted from disclosure under section 552.130 of the Government Code.

You also assert that some of the remaining information is excepted under sections 552.102(a), 552.117, 552.137, and 552.147 of the Government Code.² However, these sections are general exceptions to disclosure under the Act. Therefore, the TEA's statutory right of access under section 249.14 prevails and none of the remaining information may be withheld under sections 552.102(a), 552.117, 552.137, and 552.147. *See* Open Records Decision Nos 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4. Further, although you assert some of the remaining information is excepted under section 552.101 in conjunction with common-law privacy, a statutory right of access generally prevails over the common-law.³ *See CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy. Therefore, the TEA has a right of access to the remaining information pursuant to section 249.14. *See* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

In summary, with the exception of the issuing state, which we have marked for release, the district must withhold the information you have marked under section 552.130 of the Government Code. The district must release the remaining information to the TEA requestor pursuant to section 249.14 of title 19 of the Texas Administrative Code.⁴

² Section 552.102(a) protects information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. *See* Gov't Code § 552.102(a). Section 552.117 excepts the present and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request confidentiality for the information under section 552.024 of the Government Code. *See id.* § 552.117(a)(1). Section 552.137 excepts an e-mail address of a member of the public provided for the purpose of communicating electronically with a governmental body. *See id.* § 552.137(a). Section 552.147 excepts a living person's social security number. *See id.* § 552.147(a).

³ Common-law privacy 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 (Tex. 1976).

⁴ Because the TEA has a right of access to certain information in these 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.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/agn

Ref: ID# 433057

Enc. Submitted documents

c: Requestor
(w/o enclosures)