



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2012

Ms. Laura Rodriguez McLean
Counsel for Carrollton-Farmers Branch Independent School District
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
909 Hidden Ridge Drive, Suite 410
Irving, Texas 75038

OR2012-06915

Dear Ms. McLean:

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# 453227.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for identity information, contact information, disciplinary information, employment information, audit information, and any other information relevant to a misconduct investigation pertaining to a former district employee. You state the district will release some of the requested information to the requestor. You also state the district has redacted student identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, and will withhold driver's license numbers under section 552.130(c) of the Government Code.¹ You claim that a

¹We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution 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. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>. Further, although you state driver's license numbers will be withheld under Open Records Decision No. 684 (2009), we note on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3), such as driver's license numbers, without the necessity of seeking a decision from the attorney general. Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *Id.* § 552.130(d), (e).

portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 statutes. Section 261.201 of the Family Code provides in part as follows:

(a) [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); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261). You claim the portions of the submitted information you have marked consist of communications regarding alleged or suspected child abuse with the Texas Department of Family and Protective Services (“DFPS”) under chapter 261 of the Family Code. We note, although the district is not an agency authorized to conduct an investigation under chapter 261, DFPS is an authorized agency. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we agree the information you have marked consists of, or reflects, communications used or developed in an investigation conducted under chapter 261. Thus, the information you have marked is generally confidential under section 261.201 of the Family Code.

As noted above, the requestor identifies himself as an investigator with the TEA. The investigator’s request states he 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. 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.

19 T.A.C. § 249.14(a), (c). The investigator states the TEA has opened an investigation regarding the alleged educator misconduct or criminal history information of the former employee and he needs to obtain the requested records in order to conduct a full and complete investigation. The investigator also states the alleged misconduct or criminal history information could warrant disciplinary action relating to the former employee's educator certification. Thus, we find the requested information is subject to the right of access afforded to the TEA under section 249.14. However, because some of the submitted information 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. We also find there is a conflict between section 552.130, under which you state you are withholding driver's license numbers, and 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.). Section 249.14 generally provides the TEA staff may obtain and investigate information concerning alleged improper conduct by an educator that would warrant the SBEC denying relief to or taking disciplinary action against the person or certificate. *See* 19 T.A.C. § 249.14(a). However, section 261.201 specifically protects child abuse or neglect reports and investigative information, and section 552.130 specifically protects Texas motor vehicle record information. These sections specifically permit release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Accordingly, notwithstanding section 249.14, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, and driver's license information under section 552.130. The remaining information must be released.

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,

A handwritten signature in black ink that reads "Sean Opperman". The signature is written in a cursive style with a long horizontal flourish at the end.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 453227

Enc. Submitted documents

c: Requestor
(w/o enclosures)