



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2013

Mr. Orlando Juarez, Jr.
Counsel for United Independent School District
Escamilla, Poneck & Cruz, LLP
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2013-01382

Dear Mr. Juarez:

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# 476952.

The United Independent School District (the "district"), which you represent, received a request for information from an investigator with the Texas Education Agency (the "TEA") regarding a named employee. You state some information has been or will be released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 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 exception encompasses information made confidential by statute, including section 21.048 of the Education Code, which 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). The information in Exhibit B consists of teacher certification examination results. You state that neither subsection 21.048(c-1)(1) or subsection (2) is applicable in this instance. Therefore, we find the information we have marked must generally be withheld under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). Upon review, we agree the information in Exhibit D consists of medical records that are subject to the MPA. Accordingly, the district must generally withhold these records under section 552.101 of the Government Code in conjunction with the MPA.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's or driver's license issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). Accordingly, the district must generally withhold the driver's license information you have highlighted under section 552.130 of the Government Code.

We note the TEA's request states the requestor 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 of title 19 of the Texas Administrative Code permits the TEA to obtain information that is otherwise protected by the exceptions discussed above. *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.

Id. § 249.14(a), (c). In this instance, the requestor states he is investigating allegations made against the named district employee, which could warrant disciplinary action relating to that person's educator certification. Thus, we find that the information at issue 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 the statutes discussed above, we find there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14.

We note 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. Civ. App.—Fort Worth 1977,

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).

writ ref'd n.r.e.). Although section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator, section 21.048 of the Education Code specifically protects educator certification test results, section 159.002 of the MPA specifically protects medical records, and section 552.130 of the Government Code specifically protects driver's license information. These sections specifically permit release to certain parties and in certain circumstances that do not include the TEA's request in this instance. 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 552.101 of the Government Code in conjunction with section 21.048 of the Education Code and the MPA and the highlighted driver's license information under section 552.130 of the Government Code. The district must release the remaining information to the TEA pursuant to section 249.14 of title 19 of the Texas Administrative Code.²

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

²Because 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.

Ref: ID# 476952

Enc. Submitted documents

c: Requestor
(w/o enclosures)