



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2013

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

OR2013-03752

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# 480606.

The United Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for specified information pertaining to a named individual. You inform us some of the requested 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, 552.130, and 552.140 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. Section 552.101 encompasses information other statutes make confidential, such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). However, you cite no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Consequently, you have failed to demonstrate the applicability of section 405 of title 42 of the United States Code to the social security numbers you have highlighted within the submitted documents, and no portion of the submitted information may be withheld

under section 552.101 of the Government Code on that basis. We caution, however, section 552.353 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing a social security number, you should ensure it was not obtained or is not maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

(c-1) 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). You raise section 21.048 for Exhibit B. Upon review, however, we find no portion of Exhibit B consists of the results of examinations administered under section 21.048(c-1) of the Education Code. Thus, none of the information at issue may be withheld under section 552.101 of the Government Code on that basis.

We understand you seek to withhold Exhibit E under section 552.101 of the Government Code in conjunction with the Privacy Act of 1974, section 552a of title 5 of the United States Code ("Federal Privacy Act"). We note the Federal Privacy Act applies only to a federal agency. *See* 5 U.S.C. §§ 552(f), 552a(a). State and local government agencies are not covered by the Federal Privacy Act. *See Davidson v. Georgia*, 622 F. 2d 895, 896 (5th Cir. 1980); *see also* Attorney General Opinion MW-95 (1979). Because the district is not a federal agency, it is not bound by the Federal Privacy Act's confidentiality provisions as would be a federal agency. *See* 5 U.S.C. §§ 552a(a)(1), 552(f) (defining "agency" for purposes of Privacy Act). Therefore, Exhibit E cannot be considered confidential by law pursuant to section 552.101 of the Government Code in conjunction with the Federal Privacy Act.

You raise section 552.140 of the Government Code for the DD-214 form submitted as Exhibit D. Section 552.140 provides in part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

(b) The record is confidential for the 75 years following the date it is recorded with or otherwise first comes into the possession of a governmental body. During that period the governmental body may permit inspection or copying of the record or disclose information contained in the record only in accordance with this section or in accordance with a court order.

(c) On request and the presentation of proper identification, the following persons may inspect the military discharge record or obtain from the governmental body free of charge a copy or certified copy of the record:

...

(6) another governmental body[.]

Gov't Code § 552.140(a), (b), (c)(6). Section 552.140 provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). We note the DD-214 form at issue came into the district's possession after September 1, 2003. Section 552.140(c)(6) provides a governmental body must release a discharge form to another governmental body upon request and presentation of proper identification. *See id.* § 552.140(c)(6). Accordingly, we find the requestor has a right of access to the DD-214 under section 552.140(c)(6) of the Government Code.

You seek to withhold portions of Exhibit C under section 552.130 of the Government Code. Section 552.130(a)(1) provides that information relating to a motor vehicle operator's or driver's license or permit issued by any agency of this state or another state or country is excepted from public release. *See id.* § 552.130(a)(1). Upon review, we find the district must generally withhold the driver's license information you have highlighted, and the additional driver's license information we have marked, in Exhibit C under section 552.130(a)(1) of the Government Code.

As noted above, the requestor identifies herself as an investigator with the TEA. The investigator's request states she 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.

See id. § 249.14(a), (c). The requestor explains she is investigating alleged educator misconduct or criminal history information of the named individual and she needs to review the information at issue to conduct a complete investigation. The requestor also informs us the alleged misconduct or criminal history information could warrant disciplinary action relating to the named individual's educator certification. Thus, we find the remaining information at issue is subject to the general right of access afforded to the TEA under section 249.14. However, because some of the submitted 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 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.). Although section 249.14 generally allows the TEA access to information 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 to the remaining information at issue. We therefore conclude, notwithstanding the provisions of section 249.14, the district must withhold from the TEA any information that is excepted from disclosure under section 552.130(a)(1) of the Government Code.

We note you have redacted some social security numbers pursuant to section 552.147(b) of the Government Code.¹ However, this section is a general exception 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 section 552.147 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under Act).

In summary, the district must withhold the driver's license information you have highlighted and we have marked in Exhibit C under section 552.130(a)(1) of the Government Code. The requestor has a right of access to the DD-214 form pursuant to section 552.140(c)(6) of the

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147(b).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 480606

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the requestor has a special right of access to the information being released in this instance. Because such information is confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.