



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 6, 2014

Mr. Orlando Juarez, Jr.  
Counsel for United Independent School District  
J. Cruz & Associates, LLC  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2014-03909

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# 515845.

United 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 specified employee. You state the district released some information to the requestor. We understand the district has redacted student identifying information pursuant to the Family Educational Right and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 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 section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], 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 Exhibit C consists of teacher certification examination results. We note this information reveals the individual at issue has failed some of the examinations more than five times. Accordingly, the district may not withhold the individual's results related to these examinations under section 552.101 of the Government Code on the basis of section 21.048(c-1). *See id.* § 21.048(c-1)(2). However, we have no indication subsections 21.048(c-1)(1) and (2) apply to the remaining examination result. Therefore, the district must generally withhold the remaining examination result, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. However, we find no portion of the remaining information in Exhibit C consists of the results of examinations administered under section 21.048 of the Education Code, and the district may not withhold any of the remaining information in Exhibit C under section 552.101 of the Government Code on that basis.

Section 552.135 of the Government Code provides the following:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.135, .301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but do not make the initial report are not informants for the purposes of section 552.135 of the Government Code. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. You state Exhibit B contains personally identifiable information of informers who reported a possible violation of section 21.12 of the Texas Penal Code to the district. Based on your representation and our review, we find the information we have marked reveals the identity of an informer for purposes of section 552.135. Therefore, the district must generally withhold the information we have marked under section 552.135 of the Government Code. However, we find you

have failed to demonstrate how the remaining information in Exhibit B reveals the identity of an informer for purposes of section 552.135, and the district may not withhold the remaining information in Exhibit B on this basis.

We note the TEA's request states the requestor is seeking the information at issue 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.<sup>2</sup> Thus, 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 the SBEC. *See* 19 T.A.C. § 249.4. Section 249.14 provides in relevant part the following:

(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.

*Id.* § 249.14(a), (c). In this instance, the requestor states he is investigating allegations made against the specified district employee, which could warrant disciplinary action relating to that individual's educator certification. Thus, we find the information at issue is subject to the general right of access afforded to the TEA under section 249.14. However, because some of this information is specifically protected from public disclosure by section 21.048(c-1) of the Education Code and section 552.135 of the Government Code, we find there is a conflict between these provisions and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

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

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<sup>2</sup>Chapter 21 of the Education Code authorizes the 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 the 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 the SBEC to "adopt rules as necessary for its own procedures." *Id.* § 21.041(a).

prevail. *See* Gov't Code § 311.026(b); *see also* *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 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 educator or the educator's certificate. *See* 19 T.A.C. § 249.14(a). However, section 21.048 of the Education Code specifically protects educator certification test results and section 552.135 of the Government Code specifically protects identities of informers. Further, we note these provisions permit the release of information to certain parties and in certain circumstances that do not include the TEA's request in this instance. We therefore conclude, 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(c-1) of the Education Code, and the information we have marked under section 552.135 of the Government Code. The district must release the remaining information.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Miriam A. Khalifa  
Assistant Attorney General  
Open Records Division

MAK/akg

Ref: ID# 515845

Enc. Submitted documents

c: Requestor  
(w/o enclosures)