



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2014

Ms. Laura Rodriguez McLean
Counsel for Carrollton-Farmers Branch Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2014-19791

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# 541800.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for information pertaining to a named former educator from an investigator with the Texas Education Agency ("TEA"). You state you will release some information. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.102 and 552.107 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹The 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 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we do not address your argument under section 552.101 of the Government Code. Further, although you raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege in this instance is section 552.107 of the Government Code. See Open Records Decision Nos. 676 at 1-2.

Initially, we note the requestor is an investigator with the TEA and states he is seeking the requested 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. 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) [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) 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 requestor states the TEA has opened an investigation regarding the alleged misconduct or criminal history information of the named former educator, and he requires 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 teacher’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.

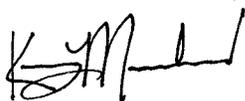
We note a specific statutory right of access prevails over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure). Although you seek to withhold portions of the submitted information under sections 552.102(a) and 552.107(1) of the Government Code, 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 information at issue may be withheld under section 552.102(a) or section 552.107. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the district must release the submitted information to the TEA pursuant to section 249.14 of title 19 of the Texas Administrative Code.³ *See* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

³Because the TEA has a right of access to certain information in the submitted 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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 541800

Enc. Submitted documents

c: Requestor
(w/o enclosures)