



January 21, 2015

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
6531 Boeing Drive  
El Paso, Texas 79925

OR2015-01137

Dear Ms. Collins:

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# 550730 (EPISD ORR #2014.482).

The El Paso Independent School District (the "district") received a request from an investigator with the Texas Education Agency (the "TEA") for documents relating to the identity, employment, and disciplinary history of a named district employee. You state the district will release some information with the redaction of certain information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under section 552.135 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>2</sup>Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office that 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. Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). We note you have submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been or should be made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your arguments against disclosure of the information at issue.

Next, we note the district has redacted additional portions of the submitted information. We understand the district has redacted motor vehicle record information pursuant to section 552.130(c) of the Government Code and an employee's social security number pursuant to section 552.147(a-1) of the Government Code.<sup>3</sup> However, you have also redacted additional information, including the district identification number and the date of birth of a district employee, as well as the work phone number for another district employee, from the submitted documents. You do not assert, nor does our review of the records indicate, you have been authorized to withhold the redacted information at issue without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

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<sup>3</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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). *See id.* § 552.130(d), (e). Section 552.147(a-1) provides, "[t]he social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 552.147(a-1). The Eighty-third Texas Legislature amended section 552.147 to make the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *See id.* § 552.024(a-1) (school district may not require employee or former employee of district to choose whether to allow public access to employee's or former employee's social security number). We further note section 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. *Id.* § 552.147(b).

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 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). Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. In this instance, you claim the information you have marked consists of identifying information of informers who reported possible violations of criminal law and possible violations of the Educator Code of Ethics, section 247.2 of title 19 of the Texas Administrative Code. Based on your representations and our review, we conclude the district must generally withhold the information we have marked under section 552.135 of the Government Code. However, we find no portion of the remaining information you have marked identifies an informer for the purposes of section 552.135, and the district may not withhold any of the remaining information at issue on that 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>4</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:

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<sup>4</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).

(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. 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 sections 552.130 and 552.135 of the Government Code, we find there is a conflict between this provision 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 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 552.130 of the Government Code specifically protects motor vehicle record information 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 you have redacted under section 552.130 and the information we have marked under section 552.135 of the Government Code.

In summary, the district must withhold the information you have redacted under section 552.130 and the information we have marked under section 552.135 of the Government Code. The district must release the remaining information to this requestor.<sup>5</sup>

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.

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<sup>5</sup>We note the requestor has a right of access to some of the information being released.

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,

A handwritten signature in black ink, appearing to read "Tim Neal", written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 550730

Enc. Submitted documents

c: Requestor  
(w/o enclosures)