



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2015

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

OR2015-05618

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# 557631 (ORR# 2014.552).

The El Paso Independent School District (the "district") received a request from an investigator with the Texas Education Agency (the "TEA") for five categories of information relating to a named employee of the district. The district states it will release some of the requested information. The district claims some of the submitted information is excepted from disclosure under section 552.135 of the Government Code.¹ We have considered the exception the district claims and reviewed the submitted information.

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].

¹Although the district raises section 552.101 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. See Gov't Code §§ 552.301, .302.

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 the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course of the investigation, but do not report a violation of law are not informants for purposes of section 552.135 of the Government Code.

The district claims the information it has marked reveals the identity of an informer who reported a possible violation of the Educators' Code of Ethics, section 247.2 of title 19 of the Texas Administrative Code. Upon review, we find, with the exception of the information we have marked for release, the district must generally withhold the information it has marked under section 552.135 of the Government Code. However, we find the district has not demonstrated the information we have marked for release identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold the information we have marked for release under section 552.135 of the Government Code.

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.² 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 exception 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.

²Chapter 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).

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 section 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 title 19 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 552.135 of the Government Code specifically protects identities of informers. Further, we note this provision permits 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 title 19 of the Texas Administrative Code, with the exception of the information we have marked for release, the district must withhold the information it has marked under section 552.135 of the Government Code.

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 557631

Enc. Submitted documents

c: Requestor
(w/o enclosures)