



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 1, 2015

Ms. Sarah W. Langlois
Counsel for the Fort Bend Independent School District
Rogers Morris & Grover
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2015-06242

Dear Ms. Langlois:

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# 558303 (FBISD ORR# 2014-15-574).

The Fort Bend Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information concerning a named educator. You state the district has released some of the information. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.117, 552.130, 552.136, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we address your claim that portions of submitted information consist of education records that must be redacted under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232. These provisions apply only to student records in the custody

¹You do not state sections 552.117, 552.130, and 552.136 as applicable exceptions, but we understand you to raise them based on your markings within the submitted information.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

of educational institutions and to records directly transferred from an educational institution to a third party. *See* 34 C.F.R. §§ 99.33(a)(2), 99.3 (defining “student”). 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 consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). However, we note FERPA is not applicable to law enforcement records maintained by the district’s police department (the “department”) for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The information at issue consists of an investigation conducted by the department. Further, you indicate this information is maintained by the department for law enforcement purposes. Accordingly, the information at issue constitutes law enforcement records created and maintained by the department for law enforcement purposes. As such, this information is not an education record subject to FERPA, and the district may not withhold any of the information at issue on that basis. However, we will address your remaining arguments for this 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 21.355 of the Education Code, which provides, “[a] document evaluating the performance of a teacher or administrator is confidential.” *See* Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). We have determined for purposes of section 21.355, the term “adminstrator” means a person who is required to and does in fact hold a certificate or permit under subchapter B of chapter 21 of the Education Code and who is performing the duties of an administrator at the time of the evaluation. *See id.* at 4. The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355, because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *See North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). Upon review, we find the information you seek to withhold consists of witness statements and other notes concerning a criminal investigation. This information does not evaluate the performance of an administrator for purposes of section 21.355 of the Education Code and the district may not withhold it under section of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. Gov’t Code § 552.130(a)(1). Accordingly, the district must

³A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoc.pdf>.

withhold the driver's license information you marked and the information we indicated under section 552.130 of the Government Code.

We note 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.⁴ 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 section 552.130 of the Government Code. *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:

(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 section 552.130 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

⁴Chapter 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 552.130 of the Government Code specifically protects motor vehicle record information. Further, section 552.130 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 the Texas Administrative Code, the district must withhold the information you marked and the information we indicated under section 552.130 of the Government Code.

You also seek to withhold portions of the remaining information under sections 552.102(a), 552.102(b), 552.108, 552.117, 552.136, and 552.137 of the Government Code. However, these exceptions 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 submitted information may be withheld under section 552.102(a), section 552.102(b), section 552.108, section 552.117, section 552.136, or section 552.137 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 the Act). Further, although you assert some of the remaining information is excepted under section 552.101 of the Government Code in conjunction with common-law privacy, a statutory right of access generally prevails over the common law. *Centerpoint Energy Houston Elec. LLC v. Harris County Toll Road*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law); Attorney General Opinion GA-0290 at 4 (2005) (noting valid rules of administrative agencies have the same "force and effect of legislation"). Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, the district must withhold the driver's license information you marked and the information we indicated, under section 552.130 of the 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.⁵

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.

⁵Because 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 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,

A handwritten signature in blue ink, appearing to read "Neal Falgoust". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping underline.

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 558303

Enc. Submitted documents

c: Requestor
(w/o enclosures)