



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 24, 2015

Ms. Holly A. Sherman
Counsel for Klein Independent School District
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2015-12483

Dear Ms. Sherman:

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# 568461.

The Klein Independent School District (the "district"), which you represent, received two requests from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named former district employee. You state the district will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note you redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory authorization to withhold the information without requesting a decision under the Act. *See*

¹We 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 that submitted to this office.

Gov't Code § 552.301(a), (e)(1)(D). You have redacted social security numbers under section 552.147(b) of the Government Code.² You have also redacted the home addresses and telephone numbers of district employees in Exhibit B. Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee's home address and telephone number subject to section 552.117(a)(1) of the Government Code without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See id.* §§ 552.024(a)-(c), .117(a)(1). However, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The home addresses and telephone numbers you redacted in Exhibit B are in law enforcement records maintained by the district's police department (the "department") in a law enforcement capacity and are not held by the district as an employer. Therefore, we find section 552.117(a)(1) of the Government Code does not apply in this situation, and the district may not withhold the home addresses and telephone numbers you redacted on that basis. You do not assert, nor does our review of our records indicate, the district is authorized to withhold the home addresses and telephone numbers of the district employees in Exhibit B without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Therefore, this information must be submitted in a manner that enables this office to determine whether it falls within the scope of an exception to disclosure. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the district must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

²Section 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. Gov't Code § 552.147(b).

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find the information in Exhibit B was used or developed in an investigation of alleged or suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261 of the Family Code as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you state Exhibit B consists of information used or developed in an investigation of alleged or suspected abuse or neglect conducted by the department, which is an agency authorized to conduct investigations under chapter 261. Accordingly, we conclude Exhibit B is confidential under section 261.201(a) of the Family Code.³

However, in this instance, as previously noted, the requestor is a staff investigator with the TEA. The TEA investigator’s request states she is seeking this 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.⁴ 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) 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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

⁴The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to TEA, effective September 1, 2005. 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 that 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). The TEA requestor states she is investigating alleged improper conduct by or criminal history information regarding the named employee, which could warrant disciplinary action relating to that person's educator certification. Thus, we find the information at issue is generally subject to the right of access afforded to the TEA under section 249.14. However, because Exhibit B is specifically protected from public disclosure by section 261.201 of the Family Code, we find there is a conflict between this statute and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

Where general and specific provisions 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); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator. However, section 261.201 of the Family Code specifically protects child abuse or neglect investigative information. Section 261.201 of the Family Code specifically permits release to certain parties and in certain circumstances that do not include the TEA investigator's request in this instance. Thus, section 261.201 of the Family Code prevails over the general TEA right of access and, notwithstanding the provisions of section 249.14, the TEA does not have a right of access under section 249.14 to the information in Exhibit B.

In summary, the district must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district must release Exhibit C.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.

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

⁵We note, because the information at issue does not contain criminal history record information ("CHRI") of the individual named in the request for information, we do not address whether the requestor has a right of access to CHRI under section 22.082 of the Education Code. *See* Educ. Code § 22.082. The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. However, these statutes apply to information held by the Department of Family and Protective Services and not the district. *See* Fam. Code §§ 261.308, .406.

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 'Kenny Moreland', written in a cursive style.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 568461

Enc. Submitted documents

c: Requestor
(w/o enclosures)