



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 28, 2015

Ms. Cynthia Rincón  
General Counsel  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2015-20321

Dear Ms. Rincón:

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# 580744 (District ORR#s 2014-15-1130 and 2015-16-120).

The Fort Bend Independent School District (the "district") received two requests from different requestors for information pertaining to a named district employee and a specified incident. You state you have released some information to the first requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 261.201(a) of the Family Code, which provides:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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

(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 submitted information was used or developed in an investigation of alleged or suspected child abuse. *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* Act of May 29, 2015, 84th Leg., R.S., ch. 734, § 80, 2015 Tex. Sess. Law Serv. 2218, 2243 (Vernon) (to be codified as an amendment to Fam. Code § 261.103) (listing agencies that may conduct child abuse investigations). However, the submitted information pertains to an investigation of alleged or suspected abuse conducted by the district’s police department, which is an agency authorized to conduct investigations under chapter 261. Therefore, we find the submitted information was developed in an investigation conducted pursuant to chapter 261 of the Family Code. Accordingly, we conclude this information is generally confidential under section 261.201(a) of the Family Code.<sup>1</sup>

However, in this instance, the first requestor is a staff investigator with the Texas Education Agency (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.<sup>2</sup> 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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

<sup>2</sup>The 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).

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). The TEA requestor states she is investigating alleged improper conduct by or criminal history information regarding the named former 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 the submitted information 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 at issue.

However, section 261.201 of the Family Code also provides information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a). In this instance, section 22.082 of the Education Code constitutes “applicable state law.” Section 22.082 provides the TEA “may obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code].” Educ. Code § 22.082. CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2); *see also id.* §§ 411.0901 (TEA is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) relating to certain

employees of schools), .090 (SBEC) is entitled to obtain CHRI from DPS about a person who has applied to SBEC for certificate under subchapter B, chapter 21, Education Code); Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 24, 2015 Tex. Sess. Law Serv. 4337, 4338 (Vernon) (to be codified as an amendment to Gov't Code § 411.087(a)) (agency entitled to obtain CHRI from DPS also authorized to “obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in later statute, later use of term is same as previously defined).

As noted above, the first requestor states she is investigating alleged educator misconduct or criminal history information of the named former employee. The district states the submitted information is related to a pending criminal investigation by the department. Accordingly, the first requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the district employee. *See* Educ. Code § 22.082.

However, section 261.201(a) states the release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office cannot determine whether release of the information is consistent with the Family Code. Therefore, if the district determines the release of CHRI is consistent with the Family Code, then the district must release information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions to the first requestor. Although you also raise section 552.108 of the Government Code, a specific access provision prevails over the general exceptions found in the Act. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure). In that event, the district must withhold the remaining information from the first requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the district determines the release of CHRI is not consistent with the Family Code, then the submitted information must be withheld from the first requestor in its entirety under section 552.101 in conjunction with section 261.201(a). *See* Attorney General Opinions DM-353 at 4 n.6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute’s enumerated entities), JM-590 at 4-5 (1986); *see also* Fam. Code § 261.201(b)-(g) (listing entities authorized to receive information under section 261.201 of the Family Code). In either case, the district must withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

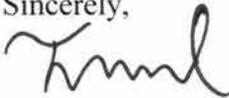
In summary, if the district determines the release of CHRI is consistent with the Family Code, then the district must release information that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal

charges and their dispositions to the first requestor, and must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the district determines the release of CHRI is not consistent with the Family Code, then the submitted information must be withheld from the first requestor in its entirety under section 552.101 in conjunction with section 261.201(a). In either case, the district must withhold the submitted information from the second requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family 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](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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 580744

Enc. Submitted documents

c: Requestors  
(w/o enclosures)