



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 21, 2015

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

OR2015-26887

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# 591560.

The Klein Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a former employee of the district. The district states it will release some information. The district states it will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions the district claims 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

¹The 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 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(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

(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); *see id.* §§ 101.003 (defining child for purposes of Family Code title 5), 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). The district states Exhibit B is confidential under section 261.201. Although the district is not an agency authorized to conduct an investigation under chapter 261, section 261.406 of the Family Code authorizes the Texas Department of Family and Protective Services to conduct investigations involving public schools under chapter 261. *See id.* §§ 261.103 (listing agencies that may conduct investigations under Fam. Code ch. 261), .406 (investigations in schools). Exhibit B relates to an investigation conducted by the Texas Department of Family Protective Services under chapter 261 of the Family Code. Based on the district’s representations and our review of Exhibit B, we agree Exhibit B is confidential under section 261.201(a) of the Family Code. Accordingly, the district must generally withhold Exhibit B from disclosure under section 552.101 of the Government Code.

However, in this instance, the requestor is a staff investigator with the TEA. The TEA investigator’s request states he is seeking the submitted 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.² 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:

²The 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).

(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). The TEA requestor states he 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 submitted information 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 at issue.

Further, the district seeks to withhold Exhibit C under section 552.107 of the Government Code. We note section 552.107 is a general exception to disclosure under the Act and does not have its own release provision. Therefore, the TEA's statutory right of access under section 249.14 of title 19 of the Texas Administrative Code prevails and none of the information at issue may be withheld from the requestor under section 552.107 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. Accordingly, Exhibit C must be released to this requestor in its entirety.

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

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 591560

Enc. Submitted documents

c: Requestor
(w/o enclosures)