



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 1, 2016

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

OR2016-15020

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# 616824 (FBISD ORR 2015-16-945).

The Fort Bend Independent School District (the "district") received a request for several categories of information pertaining to a named individual, including (1) identity information; (2) contact information; (3) disciplinary history; (4) employment documents; and (5) any other documents relevant to the requestor's investigation. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). We note FERPA is not applicable to law enforcement records maintained by the district's police

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

department (the “department”) that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your arguments against disclosure of the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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). 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, Exhibit B pertains to an investigation of alleged or suspected abuse conducted by the department, which is an agency authorized to conduct investigations under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Therefore, we find Exhibit B was developed in an investigation conducted pursuant to chapter 261 of the Family Code. Accordingly, Exhibit B is generally confidential pursuant to section 261.201(a) of the Family Code.

The requestor identifies herself as an investigator with the Texas Education Agency (the “TEA”). The requestor states she is seeking the requested information 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.<sup>2</sup> 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. § 249.14. 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.

*Id.* § 249.14 (a), (c). The investigator states the TEA has opened an investigation regarding the alleged educator misconduct or criminal history information of the named employee, and she needs to obtain the requested records in order to conduct a full and complete investigation. 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 Exhibit B is protected from public disclosure by section 261.201(a) 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.

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); *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.). Although section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator, section 261.201 of the Family Code specifically protects child abuse or neglect reports or investigative information. This section specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Thus, the specific protection of section 261.201 prevails over the general right of access of the TEA. We therefore conclude the TEA does not have a right of access under section 249.14 to the information in Exhibit B.

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<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).

However, section 261.201 of the Family Code also provides that 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), .087(a)(2) (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 requestor states she is investigating alleged educator misconduct or criminal history information of the named individual. You state Exhibit B is related to a pending criminal investigation by the department. Accordingly, the requestor has a right of access under section 22.082 of the Education Code to CHRI regarding the named individual. *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 from Exhibit B that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. Although you also raise section 552.108 of the Government Code for the information at issue, 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 rest of Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the district determines the release of CHRI is not consistent with the Family Code, then Exhibit B must be withheld from the requestor in its entirety under section 552.101 in conjunction with section 261.201. *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), (l), (k) (listing entities authorized to receive information under section 261.201 of the Family Code).

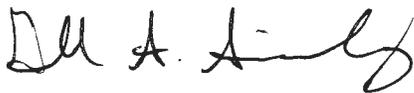
You seek to withhold Exhibit C under section 552.107 of the Government Code. We note section 552.107 is a general exception to disclosure under the Act and does not have its own release provision. Therefore, the TEA's statutory right of access under section 249.14 of title 19 of the Texas Administrative 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. Therefore, Exhibit C must be released to this requestor in its entirety.

In summary, if the district determines release of CHRI to this requestor is consistent with the Family Code, then with the exception of any CHRI, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and must release CHRI. If the district determines release of CHRI is not consistent with the Family Code, the district must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must release Exhibit C in its entirety to this requestor.<sup>3</sup>

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,



Gerald A. Arismendez  
Assistant Attorney General  
Open Records Division

GAA/dls

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<sup>3</sup>Because TEA has a right of access to certain information in the submitted documents that would otherwise 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.

Ref: ID# 616824

Enc. Submitted documents

c: Requestor  
(w/o enclosures)