



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 20, 2017

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
6500-K Boeing Drive  
El Paso, Texas 79925-1008

OR2017-05626

Dear Ms. Collins:

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# 651778 (EPISD ORR #2017.001).

The El Paso Independent School District (the "district") received a request from an investigator for the Texas Education Agency (the "TEA") for specified information pertaining to a named district employee. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 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 states the following:

Except as provided by Section 261.203, the 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 also id.* §§ 101.003(a) (defining “child” for purposes of this section 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code chapter 261). The district claims some of the information at issue is confidential under section 261.201(a)(1). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find the district has not established any of the information at issue either consists of a report of child abuse or neglect, or reveals the identity of an individual who made a report of suspected child abuse or neglect for purposes of section 261.201(a)(1) of the Family Code. Therefore, the information is not confidential under section 261.201(a)(1) of the Family Code, and the district may not withhold any of it under section 552.101 of the Government Code on that basis.

Section 552.135 of the Government Code provides, in part, the following:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov’t Code § 552.135(a)-(b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.135, .301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but do not report a violation of law, are not informants for the purposes of section 552.135 of the Government Code. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. You state some of the submitted information should be withheld in its entirety because it identifies employees who reported possible violations of section 247.2 of title 19 of the Texas Administrative Code. Upon review, we conclude the district must generally withhold the information we marked that identifies the employees under section 552.135 of the Government Code. However, we find the district has failed to demonstrate any of the remaining information is identifying information for purposes of section 552.135. Therefore, the district may not withhold any of the remaining information pertaining to the employees on that ground.

We note the TEA's request states 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.<sup>1</sup> 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 the exception discussed above. *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. § 249A. Section 249.14 provides in relevant part the following:

(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 named 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 552.135 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 title 19 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 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 refd 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

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<sup>1</sup>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 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).

T.A.C. § 249.14(a). However, section 552.135 of the Government Code specifically protects identities of informers. Further, we note this provision 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 title 19 of the Texas Administrative Code, the district must withhold the information we marked under section 552.135 of the Government Code. As the district raises no other exceptions to disclosure, the remaining information must be released.

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,



Jahanna Ward  
Assistant Attorney General  
Open Records Division

JW/eb

Ref: ID# 651778

Enc. Submitted documents

c: Requestor  
(w/o enclosures)