



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 24, 2008

Ms. Kelli H. Karczewski
Feldman, Rogers, Morris, & Grover, L.L.P.
222 North Mound, Suite 2
Nacogdoches, Texas 75961

OR2008-14535

Dear Ms. Karczewski:

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# 325539.

The Longview Independent School District (the "district"), which you represent, received a request from a Texas Department of Family and Protective Services ("DFPS") investigator for information pertaining to a named teacher. You state you have released most responsive information to the requestor. You claim that the submitted memorandum is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 21.355 of the Education Code, which provides, "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that decision, we concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.*

You state, and provide documentation showing, that the employee named in the present request was serving the district as a certified educator at the time the submitted memorandum of reprimand was written. You argue that both draft and final versions of the submitted memorandum of reprimand are therefore subject to section 21.355 of the Education Code. Upon review, we agree that the submitted information is subject to section 21.355. See *North East Independent School District v. Abbot*, 212 S.W.3d 364 (Tex. App.—Austin 2006,

no pet.) (providing that memorandum of reprimand constitutes a teacher evaluation subject to section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review.").

You acknowledge, however, that the requestor is an investigator for the DFPS. The requestor indicates that she is seeking the submitted information in her investigation into alleged child abuse under section 261.301 of the Family Code. *See* Fam. Code § 261.301. The requestor argues that she is entitled to the submitted information under section 261.303(d) of the Family Code. Section 261.303 provides, in relevant part:

(d) A person, including a medical facility, that makes a report [of alleged child abuse] shall release to [DFPS] . . . records that directly relate to the suspected abuse or neglect without requiring parental consent or a court order.

Id. § 261.303(d). Because the submitted information is directly related to a report of abuse and the requestor is conducting an investigation under section 261.301, we find that the requestor has a right of access to the submitted information pursuant to section 261.303(d) of the Family Code. However, because the submitted memorandum is specifically protected from public disclosure by section 21.355 of the Education Code, we find that there is a conflict between this statute and the right of access afforded to DFPS investigators under section 261.303(d) of the Family 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 that 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. App.—Fort Worth 1977, writ ref'd n.r.e.).

In this instance, although section 261.303(d) generally allows DFPS access to information from a reporting party relating to suspected child abuse, section 21.355 of the Education Code specifically protects educator evaluations. Also, section 21.355 permits release of educator evaluations to certain parties in certain circumstances that do not include DFPS's present request. Because the specific confidentiality provision of section 21.355 prevails over the general DFPS right of access, we conclude that, notwithstanding section 261.303(d) of the Family Code, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. *See City of Lake Dallas*, 555 S.W.2d at 168.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 325539

Enc. Submitted documents

c: Ms. Jamie Borden Johnson
Texas Department of Family and Protective Services
Child Protective Services Specialist IV
P.O. Box 149030
Austin, Texas 78714-9030
(w/o enclosures)