



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 27, 2009

Ms. Andrea Sheehan  
Law Offices of Robert E. Luna  
4411 North Central Expressway  
Dallas, Texas 75205

OR2009-02605

Dear Ms. Sheehan:

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# 336017.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to a named former employee from an investigator with the Texas Education Agency (the "TEA"). You state some of the requested information has been released to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.147 of the Government Code. You also state, and provide documentation showing, that you notified the individual whose privacy interests are at issue of the request and of her right to submit arguments to this office as to why the information should not be released. *See generally* Gov't Code §§ 552.304 (providing that interested party may submit comments stating why information should or should not be released), 552.305(d). We have considered the exceptions you claim and reviewed the submitted information, a portion of which includes a representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that you have redacted Texas motor vehicle record information in Exhibit D of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *Id.* § § 552.301(a), .301(e)(1)(D). You do not assert, nor does our review of our records indicate, that you have been authorized to withhold Texas motor vehicle record information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information that it submits to this office in seeking an open records ruling. Failure to do so may result in the presumption that the redacted information is public. *See id.* § 552.302.

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. This section encompasses information protected by other statutes, such as the Family Medical Leave Act (the “FMLA”), section 2654 of title 29 of the United States Code. Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee’s physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). You state that the submitted information contains “medical certification[s] specifically provided for FMLA purposes.” Accordingly, we find that Exhibits B-1, B-2, and B-4 are confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find that none of the release provisions of the FMLA apply to the information. Thus, we conclude that the district must withhold Exhibits B-1, B-2, and B-4 pursuant to section 552.101 of the Government Code in conjunction with the FMLA.

Section 21.355 of the Education Code is also encompassed by section 552.101 of the Government Code. Section 21.355 provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* at 4. You state that the individual at issue held an administrator certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of an administrator at the time of the evaluations. You contend that the information in Exhibit E constitutes evaluations for the purpose of section 21.355 of the Education Code. Upon review, we agree that Exhibit E is confidential under section 21.355 of the Education Code. Thus, the district must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You also contend that Exhibit D includes Texas motor vehicle record information excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state. Gov’t Code § 552.130. Accordingly, the district must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. However, you have failed to demonstrate how the information we have marked for release is subject to section 552.130, and it may not be withheld from disclosure on that basis.

We note that the requestor is a staff investigator with the Texas Education Agency (“TEA”). TEA’s request states that it 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. Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 249.1. Section 249.14 provides the following in relevant part:

(a) Staff [of TEA] 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 board denying relief to or taking disciplinary action against the person or certificate.

(c) The executive director and staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

*Id.* We note that these regulations do not specifically grant access to information subject to the FMLA, section 21.355 of the Education Code, or section 552.130 of the Government Code. We further note that the FMLA, section 21.355 of the Education Code, and section 552.130 of the Government Code have their own access provisions governing release of information. Generally, if confidentiality provisions or another statute specifically authorize release of information under certain circumstances or to particular entities, then the information may only be released or transferred in accordance therewith. *See* Attorney General Opinions GA-0055 (2003) at 3-4 (SBEC not entitled to access teacher appraisals made confidential by section 21.355 of the Education Code where section 21.353 of the Education Code expressly authorizes limited release of appraisals to other school districts in connection with teachers' employment applications), DM-353 (1995) at 4-5 n.6 (detailed provisions in state law for disclosure of records would not permit disclosure "to other governmental entities and officials . . . without violating the record's confidentiality"), JM-590 (1986) at 5 ("express mention or enumeration of one person, thing, consequence, or class is tantamount to an express exclusion of all others"); Open Records Decision No. 655 (1997) (because statute permitted Department of Public Safety to transfer confidential criminal history information only to certain entities for certain purposes, county could not obtain information from the department regarding applicants for county employment). We also note that an interagency transfer of this information is not permissible where, as here, the applicable statutes enumerate the specific entities to which information encompassed by the statute may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinion GA-0055.

Furthermore, 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. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). Although section 249.14 generally allows TEA access to information relating to suspected misconduct on the part of an educator, the FMLA specifically protects information created for purposes of the FMLA, section 21.355 of the Education Code specifically protects teacher evaluations, and section 552.130 specifically protects Texas motor vehicle record information. These sections and the FMLA specifically permit release to certain parties and

in certain circumstances that do not include TEA's request in this instance. We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information that is excepted from disclosure under the FMLA, section 21.355 of the Education Code, and 552.130 of the Government Code. *See* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission).

You assert that some of the remaining information is excepted under sections 552.101 in conjunction with common-law privacy and constitutional privacy, and sections 552.102, 552.117, 552.136, and 552.147 of the Government Code.<sup>2</sup> However, these sections do not have their own release provisions. Therefore, TEA has a right of access to the remaining information pursuant to section 249.14. *See* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

In summary, the district must withhold the information we have marked subject to section 552.101 of the Government Code in conjunction with (1) the FMLA and (2) section 21.355 of the Education Code. The district must also withhold the information we have marked under section 552.130 of the Government Code. The district must release the remaining information to TEA pursuant to section 249.14 of Title 19 of the Texas Administrative Code.<sup>3</sup>

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<sup>2</sup>Common-law privacy protects information if: (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d668 (Tex. 1976). Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 455 at 4 (1987). Section 552.102(b) excepts from disclosure all information from transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102. Section 552.117 excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *Id.* § 552.117. Section 552.136 makes confidential "a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body[.]" *Id.* § 552.136. Section 552.147 excepts from disclosure the social security number of a living person. *Id.* § 552.147.

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

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/cc

Ref: ID# 336017

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)