



ATTORNEY GENERAL OF TEXAS
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Ms. Laura C. Rodriguez
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P.O. Box 460606
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OR2010-03465

Dear Ms. Rodriguez:

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# 373833.

The Uvalde Consolidated Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to a named district employee from an investigator with the Texas Education Agency ("TEA"). You state the district has released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You claim pages AG-0001 through AG-0014 are evaluations of the named district employee. 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, including section 21.355 of the Education Code. Section 21.355 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. Open Records Decision No. 643 (1996). This office has also 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, the individual at issue held a teacher's certificate under chapter 21 of the Education Code and was performing the functions of a teacher at the time of the evaluations. Upon review of the information at issue, we conclude pages AG-0001 through AG-0013 are evaluations that are confidential under section 21.355 and must generally be withheld pursuant to section 552.101 of the Government Code. However, we find page AG-0014 does not consist of an evaluation of the performance of the teacher at issue for purposes of section 21.355; therefore, the district may not withhold this page under section 552.101 on that ground. As you raise no further exceptions to disclosure of this page, it must be released to the requestor.

You raise section 261.201(a) of the Family Code for the document labeled AG-0015. Section 552.101 also encompasses section 261.201(a), which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). We note that 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, you state page AG-0015 consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation under chapter 261 of the Family Code conducted by the Child Protective Services Division of the Texas Department of Family and Protective Services ("CPS"). Therefore, we find that page AG-0015 is generally confidential under section 261.201 of the Family Code.

We note that 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.¹ Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits 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 SBEC. *See* 19 T.A.C. § 249.4. Section 249.14 provides in relevant part:

(a) [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.

19 T.A.C. § 249.14. In this instance, the TEA requestor states that he is investigating alleged improper conduct by the named district employee and needs to review the requested records to determine whether measures need to be taken against the employee's teaching credentials. Thus, we find that the information at issue is subject to the general right of access afforded to the TEA under section 249.14. However, because some of the requested information is specifically protected from public disclosure by the exceptions discussed above, we find that there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14.

We note that section 249.14 does not specifically grant access to information subject to section 21.355 of the Education Code or section 261.201 of the Family Code. We further note that section 21.355 of the Education Code and section 261.201 of the Family Code have their own access provisions authorizing 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

¹Chapter 21 of the Education Code authorizes 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 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 SBEC to "adopt rules as necessary for its own procedures." *Id.* § 21.041(a).

(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"). We also note that an interagency transfer of this information is not permissible where, 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 to access information relating to suspected misconduct on the part of an educator, section 21.355 of the Education Code specifically protects educator evaluations and section 261.201 of the Family Code specifically protects child abuse or neglect reports or investigative information. These sections specifically permit release to certain parties and in certain circumstances that do not include TEA's request in this instance. We therefore conclude that section 249.14 of the Texas Administrative Code does not provide the requestor access to information subject to section 21.355 of the Education Code or section 261.201 of the Family 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). We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold from TEA any information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code or section 261.201 of the Family Code.

In summary, the district must withhold pages AG-0001 through AG-0013 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold page AG-0015 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The remaining document must be released to the requestor.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 373833

Enc. Submitted documents

c: Requestor
(w/o enclosures)