



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2011

Mr. Fortunato G. Paredes
Escamilla, Poneck & Cruz, L.L.P.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2011-14501

Dear Mr. Paredes:

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# 434225.

The United Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for specified information pertaining to a named former district employee. You claim the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. You also state you notified the former employee of the district's receipt of the request for information.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). 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." This section encompasses information protected by other statutes, including section 21.355 of the Education Code. Section 21.355(a) provides "[a] document evaluating the performance of a teacher or administrator is confidential." Act of May 25, 2011, 82nd Leg., R.S., H.B. 2971, § 1 (to be codified at Educ. Code § 21.355(a)). Additionally, the court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it "reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and

¹We note this office has not received any comments from the former employee.

provides for further review.” *N. E. Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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. *See* Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert the documents in Exhibits C and D evaluate the performance of the former employee. You also state the employee 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, we agree Exhibits C and D are confidential under section 21.355. Therefore, the district must withhold Exhibits C and D under section 552.101 of the Government Code in conjunction with section 21.355.

We note section 552.130 is applicable to the submitted driver’s license number.² Section 552.130(a) of the Government Code provides the following:

Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). The district must withhold the motor vehicle record information we have marked under section 552.130.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

We note, however, the request for information indicates the requestor is seeking the requested 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.³ Accordingly, we will consider whether section 249.14 permits the requestor to obtain information that is otherwise protected by the exceptions 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 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 [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(a), (c). The requestor states she is investigating allegations made against the former employee and needs to review the requested records to determine whether measures need to be taken against this person’s teaching credentials. Thus, the requestor has a right of access to the submitted information under section 249.14. However, because some of the requested information is specifically protected from public disclosure by the statutes discussed above, we find there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14.

Section 249.14 does not specifically grant access to information subject to section 21.355 of the Education Code or section 552.130 of the Government Code. In addition, section 21.355 and section 552.130 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

³Chapter 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).

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). An interagency transfer of information is also 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 552.130 of the Government Code specifically protects motor vehicle record information. These sections also specifically permit release to certain parties and in certain circumstances that do not include TEA's request. We therefore conclude 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 552.130 of the Government Code. Therefore, the district must withhold from the requestor Exhibits C and D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and the information we have marked under section 552.130 of the Government Code, notwithstanding the provisions of section 249.14.

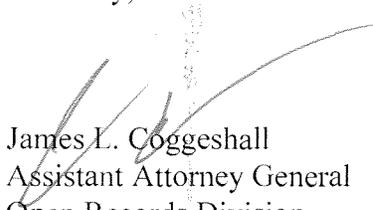
You also assert portions of the remaining information are excepted from disclosure under sections 552.102(b) and 552.117 of the Government Code. However, these sections are general exceptions to disclosure under the Act. The exceptions to disclosure found in the Act do not apply to information to which an individual has a statutory right of access. *See* Open Records Decision Nos. 583 (1990) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act), 451 (1986) (same). Thus, the right of access afforded to the TEA investigator under section 249.14 prevails and none of the remaining information may be withheld under section 552.102(b) or 552.117.

To conclude, the district must withhold Exhibits C and D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and the information we have marked under section 552.130 of the Government Code. The district must release the remaining information pursuant to section 249.14 of title 19 of the Texas Administrative Code.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 434225

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Eduardo Castillo
3016 San Agustin Avenue
Laredo, Texas 78040
(w/o enclosures)