



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 3, 2013

Ms. Christine Badillo  
Counsel for Leander Independent School District  
Walsh, Anderson, Gallegos, Green & Treviño, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2013-11376

Dear Mr. Badillo:

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# 492086 (Ref. No. 492086).

The Leander 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 individual, including disciplinary, contact, and employment information. We note some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim 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.

Initially, we note you have not submitted any information responsive to the request for contact or employment information. Thus, although you state the district has submitted a

---

<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter ruling applies only to the type of information you have submitted for our review. This ruling does not authorize the district to withhold any type of information that is substantially different from the types of information you submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Therefore, we presume the district has released the information responsive to the remaining portions of the request, to the extent such information existed when the district received this request for information. If not, then the district must release any such information immediately. *See id.* §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

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 other statutes make confidential, such as section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. In Open Records Letter No. 643, this office interpreted section 21.355 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 opinion, we concluded 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.* In addition, the Third Court of Appeals has held a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state the submitted information consists of evaluations and written reprimands that pertain to an individual who was employed by the district as a teacher when her performance was evaluated. You also state, and submit documentation showing, this individual held the appropriate certification under subchapter B of the Education Code at the time of the evaluations and written reprimands. Based on your representations and our review, we find the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, we find no portion of the remaining information, which includes written responses by the teacher at issue to certain evaluators, consists of teacher evaluations for the purposes of section 21.355 of the Education Code. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of section 21.355.

We note the requestor is an investigator with the TEA and states she 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. 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) TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

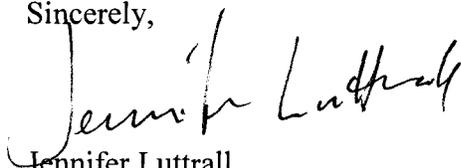
19 T.A.C. § 249.14(a), (c). The requestor states the agency has opened an investigation regarding the alleged misconduct or criminal history information of the teacher at issue, and she requires the requested records in order to conduct a full and complete investigation. The investigator also states the alleged misconduct or criminal history information could warrant disciplinary action relating to the teacher's educator certification. Thus, we find the requestor may have a right of access to information regarding the teacher pursuant to section 249.14. However, because some of the information at issue is confidential under section 21.355 of the Education Code, we find there is a conflict between section 21.355 and the right of access afforded to agency investigators under section 249.14.

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); *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.). Section 249.14 generally provides agency staff may obtain and investigate information concerning alleged improper conduct by an educator that would warrant SBEC denying relief to or taking disciplinary action against the educator or the educator's certificate. *See* 19 T.A.C. § 249.14(a). However, section 21.355 specifically protects "a document evaluating the performance of a teacher[.]" Educ. Code § 21.355. Further, section 21.355 specifically permits release to certain parties and in certain circumstances that do not include the agency's request in this instance. Thus, we find section 21.355 prevails over the agency's general right of access. Accordingly, notwithstanding section 249.14, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise 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,

A handwritten signature in black ink, appearing to read "Jennifer Luttrall". The signature is written in a cursive style with a large initial "J".

Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 492086

Enc. Submitted documents

c: Requestor  
(w/o enclosures)