



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2013

Ms. Sandi Pearson Tarski
Counsel for Wichita Falls Independent School District
Walsh, Anderson, Gallegos, Green & Treviño, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2013-14746

Dear Ms. Tarski:

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# 498980.

The Wichita Falls Independent School District (the "district") received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named former district employee. You state the district is releasing some information to the requestor. 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.

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 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 consists of a Human Resources letter to the named individual recommending non-renewal and a termination agreement, constitute 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 of the Education Code.

We note the requestor is an investigator with the TEA and states he 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 TEA has opened an investigation regarding the alleged misconduct or criminal history information of the teacher at issue, and he 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 TEA 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 TEA 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 TEA's request in this instance. Thus, we find section 21.355 prevails over the TEA'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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 498980

Enc. Submitted documents

c: Requestor
(w/o enclosures)