



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2016

Ms. Sonya M. Garcia
Counsel for the United Independent School District
J. Cruz & Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2016-17552

Dear Ms. Garcia:

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# 621240.

The United Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information relating to a named district employee. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.147 of the Government Code. 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." Gov't Code § 552.101. Section 552.101 encompasses section 21.355 of the Education Code, which 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 or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Additionally, this office concluded an administrator is someone who is required to and does hold an administrator's certificate under subchapter B of chapter 21 of the Education

Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* In addition, the court has concluded 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.” *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). We further determined that “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *See Open Records Decision No. 684 at 5 (2009).*

You assert the submitted consists of written evaluations that are confidential under section 21.355 of the Education Code. However, we note the information at issue pertains to the employee’s performance as a counselor. Thus, we find you have failed to demonstrate the information at issue evaluates the performance of a teacher or administrator for the purposes of section 21.355. Therefore, the district may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note the request states the TEA 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). In this instance, the requestor states he is investigating allegations made against the named individual, which could warrant disciplinary action relating to that person’s educator certification. Thus, we find the submitted information is subject to the general right of access afforded to the TEA under section 249.14. The district asserts the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.102 of the Government Code, and section 552.147 of the Government Code. However, a statute governing the release of specific information prevails over the common-law and exceptions to disclosure found in the Act. *CenterPoint Energy Houston Elec. LLC v. Harris County Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common-law controls only where there is no

conflicting or controlling statutory law); Attorney General Opinion DM-146 at 3 (1992); Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 at 4 (1986) (specific statutory right of access provisions overcome Act's general exceptions to disclosure). Therefore, the district may not withhold the submitted information from the requestor under section 552.101 of the Government Code in conjunction with common-law privacy, section 552.102 of the Government Code, or section 552.147 of the Government Code. The district must release the submitted information.¹

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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 621240

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ Because the requestor has a special right of access to some of the information being released, the district must again seek a decision from this office if it receives another request for the same information from another requestor.