



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 23, 2008

Ms. Meredith Hayes
Abernathy, Roeder, Boyd, & Joplin P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2008-13039

Dear Ms. Hayes:

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# 322567.

The McKinney Independent School District (the "district"), which you represent, received a request for six categories of information related to a former district employee. You state that you have released some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an attorney representing the former district employee. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 information protected by other statutes, such as section 1324a of title 8 of the United States Code. This section provides that an Employment Eligibility Verification Form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The submitted documents contain the former employee's I-9 form. Release of this document in this instance would be "for purposes other than for enforcement" of the referenced federal

statutes. Accordingly, we find that the submitted I-9 form is confidential and must only be released in compliance with the federal laws and regulations governing the employment verification system.

The submitted documents also include the former employee's W-4 form. Section 552.101 of the Government Code encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) renders tax return information confidential. 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); Open Records Decision No. 600 (1992) (W-4 forms). Accordingly, the district must withhold the submitted W-4 form pursuant to section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). We note a portion of the submitted information contains results from an examination administered under section 21.048 of the Education Code. You do not inform us that subsection 21.048(c-1)(1) or (2) is applicable; therefore, the district must withhold these results under section 552.101 in conjunction with section 21.048 of the Education Code.

Section 552.101 encompasses section 21.355 of the Education Code as well. Section 21.355 provides that "[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, we 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 who is teaching at the time of his or her evaluation. *Id.* You state that the submitted documents contain evaluative and assessment information regarding the former employee's performance. You state that the former employee was required to and did hold a teaching certificate under chapter 21, and was teaching at the time of the evaluations. Based on your representations and our review, we conclude that section 21.355 is applicable to the remaining submitted documents.

Accordingly, the district must withhold the remaining information under section 552.101 in conjunction with section 21.355 of the Education Code.

In this instance, the requestor is an investigator with the Texas Education Agency ("TEA"). We note that the TEA's request states that it seeks 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.¹ Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. ch. 249. Section 249.14 provides in pertinent 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 [board] 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. We note that these regulations do not specifically grant access to information subject to section 1324a of title 8 of the United States Code, section 6103(a) of title 26 of the United States Code, and sections 21.355 and 21.048 of the Education Code. We further note that section 1324a of title 8 of the United States Code, section 6103(a) of title 26 of the United States Code, and sections 21.355 and 21.048 of the Education Code have their own access provisions governing 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 (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

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). Effective September 1, 2005, SBEC's administrative functions and services transferred to TEA. *Id.* § 21.035.

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).

In this instance, the requestor states that he is investigating alleged previous misconduct by the named former district employee and that he needs to review the requested records “to determine whether enforcement actions are warranted[.]” Thus, we find that the information at issue is subject to the general right of access afforded to the TEA under 19 T.A.C. § 249.14. However, because the submitted information is excepted from public disclosure by the statutes discussed above, we find that there is a conflict between these exceptions and the right of access afforded to the TEA investigators pursuant to 19 T.A.C. § 249.14. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails against 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. App.—Fort Worth 1977, writ ref’d n.r.e.).

Although section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator, sections 21.355 and 21.048 of the Education Code specifically protect teacher evaluations and teacher certification test results of an individual who did not fail the test more than five times. Furthermore, section 1324a of title 8 of the United States Code and section 6103(a) of title 26 of the United States Code specifically protect I-9 forms and tax return information. These sections specifically permit release to certain parties and in certain circumstances that do not include the TEA’s present request. Because these specific provisions prevail over the TEA’s general right of access, we conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, section 6103(a) of title 26 of the United States Code, and sections 21.355 and 21.048 of the Education Code.

In summary, the district must withhold the test results and teacher evaluations under sections 21.048 and 21.355 of the Education Code, respectively. The district must withhold the W-4 form pursuant to 6103(a) of title 26 of the United States Code. Finally, the district must withhold the I-9 form under 1324a of title 8 of the United States Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/mcf

Ref: ID#322567

Enc. Submitted documents

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