ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2009

Ms. Andrea Sheehan
Law Offices of Robert E. Luna
4411 North Central Expressway
Dallas, Texas 75205

OR2009-05442

Dear Ms. Sheehan:

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# 341320.

The Garland Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for six categories of information pertaining to a former district employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 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. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." 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 (1996). In Open Records Decision No. 643, we determined that 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 state that the information in Exhibit B relates to a teacher who held the appropriate classroom teacher certification and was functioning as a teacher during the relevant time period. Based on your representations and our review of the information at issue, we conclude that Exhibit B consists of a teacher evaluations for the purposes of section 21.355. Therefore, the district

must generally withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355

You also contend that Exhibit D includes Texas motor vehicle record information excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. Gov't Code § 552.130. Accordingly, the district must generally withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. However, you have failed to demonstrate how the information we have marked for release is subject to section 552.130, and it may not be withheld from disclosure on that basis.

We note TEA's request states it is seeking this 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] Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits TEA 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:

> (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 [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). We note that these regulations do not specifically grant access to information subject to section 21.355 of the Education Code or section 552.130 of the Government Code. We further note section 21.355 of the Education Code and section 552.130 of the Government Code have their own access provisions governing release

[1]Chapter 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).

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 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). We also note that an interagency transfer of this information is not permissible where, as here, 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 access to information relating to suspected misconduct on the part of an educator, section 21.355 of the Education Code specifically protects teacher evaluations and section 552.130 specifically protects Texas motor vehicle record information. These sections specifically permit release to certain parties and in certain circumstances that do not include TEA's request in this instance. We therefore 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 21.355 of the Education Code and section 552.130 of the Government Code. *See* Open Records Decision No. 629 (1994) (provision of Bingo Enabling Act that specifically provided for non-disclosure of information obtained in connection with examination of books and records of applicant or licensee prevailed over provision that generally provided for public access to applications, returns, reports, statements and audits submitted to or conducted by Texas Alcoholic Beverage Commission).

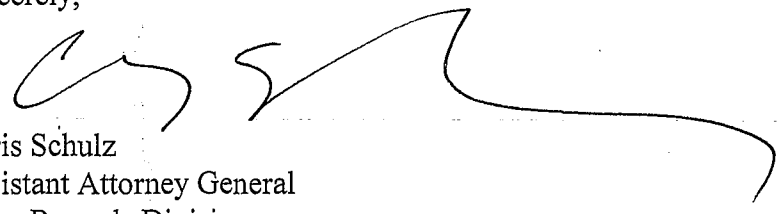
You assert that some of the remaining information is excepted under sections 552.102, 552.117, and 552.147 of the Government Code.[2] However, these sections do not have their own release provisions. Therefore, TEA has a right of access to the remaining information pursuant to section 249.14. *See* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

In summary, 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. With the exception of the information we have marked for release, the district must withhold the information we have marked under section 552.130 of the Government Code. The district must release the remaining information to TEA pursuant to section 249.14 of Title 19 of the Texas Administrative Code.[3]

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 at (512) 475-2497.

Sincerely,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/eeg

---

[2]Section 552.102(b) excepts from disclosure all information from transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102. Section 552.117 excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *Id.* § 552.117. Section 552.147 excepts from disclosure the social security number of a living person. *Id.* § 552.147.

[3]Because TEA has a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the district must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.

Ref: ID# 341320

Enc. Submitted documents

cc: Requestor
(w/o enclosures)