



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

July 14, 2009

Mr. David P. Hansen  
Schwartz & Eichelbaum, P.C.  
4201 W. Parmer Lane, Suite A-100  
Austin, Texas 78727

OR2009-09686

Dear Mr. Hansen:

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# 349269.

The Mission Consolidated School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency ("TEA") for six categories of information pertaining to a named district employee. You state that most of the responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.130 of the Government Code. You also indicate that you seek to withhold the employee's social security number under section 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 information protected by other statutes, including 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. 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 at 3 (1996). Additionally, this office has determined 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 is serving as a teacher at the time of the evaluation. *Id.* at 4.

You contend the submitted Summative Annual Appraisal document is a teacher performance evaluation that pertains to the specified district employee. We understand that the named employee held the appropriate certificate and was serving as a teacher at the time of the

evaluation. Based on our review, we conclude this document is an evaluation of the specified employee's performance as a teacher; thus this document constitutes an evaluation that is confidential pursuant to section 21.355 of the Education Code.

Next, you claim the submitted transcript is excepted from disclosure under section 552.102(b). This section excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degrees obtained, the submitted transcript is subject to section 552.102(b) of the Government Code.

We next address your assertion that some of the submitted information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree the Texas motor vehicle record information we have marked is subject to section 552.130.

You also claim the social security numbers within the submitted information are excepted pursuant to section 552.147. This section provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147(a). We agree that the social security numbers are subject to section 552.147 of the Government Code.

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.<sup>1</sup> 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.

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.

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<sup>1</sup>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).

...

(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). In this case, the requestor states that he is investigating alleged improper conduct by the named district employee and that he needs to review the requested records to determine whether measures need to be taken against the employee's teaching credentials. Thus, we find that the requested information is subject to the general right of access afforded to the TEA under section 249.14. However, because some of the requested information is specifically protected from public disclosure by the statutes and exceptions discussed above, we find that there is a conflict between these statutes and exceptions and the right of access afforded to TEA investigators under this section.

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 educator evaluations. Educ. Code § 21.355. Chapter 21 of the Education Code also specifically permits release of teacher evaluations to certain parties and in certain circumstances that do not include TEA's present request. *See* Educ. Code § 21.352; Attorney General Opinion 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 21.352 of the Education Code expressly authorizes limited release of appraisals to other school districts in connection with teachers' employment applications). Because the specific statute raised by the district prevails over the general TEA right of access, we conclude that, notwithstanding the provisions of section 249.14, the district must withhold the evaluation under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, we address the information that is excepted from public disclosure pursuant to sections 552.102, 552.130, and 552.147. Although the district's claimed exceptions under the Act are more specific to the information at issue than TEA's general right of access under section 249.14, TEA's right of access prevails over the Act's exceptions to disclosure unless those exceptions specifically authorize release under certain circumstances to particular entities. Section 552.130 of the Government Code has its own access provision specifically governing release of the Texas motor vehicle record information it protects. Gov't Code § 552.130(b). 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, 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). The release provision of section 552.130 does not permit access in this case. Therefore, notwithstanding the provisions of section 249.14, the district must withhold the information we marked that is excepted from disclosure under section 552.130 of the Government Code. However, because sections 552.102 and 552.147 of the Government Code do not have their own release provisions, we conclude TEA's statutory right of access prevails over these general exceptions. See Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Thus, TEA has a right of access to the remaining information pursuant to section 249.14.

In summary, the district must withhold the submitted teacher evaluation we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, and the Texas motor vehicle record information we marked under section 552.130. The district must release the remaining information to TEA pursuant to section 249.14 of title 19 of the Texas Administrative Code.

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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/cc

Ref: ID# 349269

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)