



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 10, 2009

Ms. Andrea Sheehan and Ms. Elisabeth A. Donley  
Law Offices of Robert E. Luna  
Attorney for Garland Independent School District  
4411 North Central Expressway  
Dallas, Texas 75205

OR2009-11110

Dear Ms. Sheehan and Ms. Donley:

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# 351883.

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 named district employee. You state you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.147 of the Government Code. You indicate that you will redact social security numbers from the submitted information.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, you acknowledge, and we agree, that the district failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See* Gov't Code § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Sections 552.101 and 552.102 can provide compelling reasons to overcome this presumption; therefore, we will address your arguments under these exceptions.

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 teacher evaluations for the purposes of section 21.355. Therefore, the district must generally withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355.

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>2</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 exception discussed above. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure).

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<sup>2</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).

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). Upon review, find that the information at issue is subject to the general right of access afforded to the TEA under 19 T.A.C. § 249.1. However, because some of the requested information is specifically protected from public disclosure by the statute discussed above, we find that there is a conflict between this statute and the right of access afforded to TEA investigators under 19 T.A.C. § 249.1. 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. 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. This statute also specifically permits release to certain parties and in certain circumstances that do not include TEA's present request. Because the specific statute at issue prevails over the general TEA 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 21.355 of the Education Code.

You assert that some of the remaining information is excepted under sections 552.102 and 552.147 of the Government Code.<sup>3</sup> However, these sections are general exceptions under the Act that do not have their own release provisions. Thus, we find that TEA's statutory right of access prevails over the general exceptions. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception

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<sup>3</sup>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.

to public disclosure). 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 you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must release the remaining information to TEA pursuant to section 249.14 of Title 19 of the Texas Administrative Code.<sup>4</sup>

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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/rl

Ref: ID# 351883

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>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.