



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 12, 2009

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

OR2009-11263

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# 351848.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency ("TEA") for all investigation, disciplinary, and employment information regarding a named former district employee. You state the district has provided some of the requested information to the requestor. You claim the submitted performance evaluation, college transcript, and other personnel records are excepted from disclosure under sections 552.101, 552.102, 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, such as 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 section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word "teacher" means a person who 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 who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4.

You assert the submitted teacher performance evaluation in Exhibit B is confidential under section 21.355. Upon review, we agree the document at issue is an evaluation for purposes of section 21.355. You state the former teacher whose evaluation is at issue held a teaching certificate under subchapter B of chapter 21 of the Education Code at the times of the evaluation. You also state the former teacher was engaged in the process of teaching at the time of the evaluation. Thus, the submitted teacher performance evaluation in Exhibit B is subject to section 21.355 of the Education Code.

You claim the former teacher's college transcripts submitted in Exhibit C are excepted under section 552.102 of the Government Code, which excepts from disclosure all information in 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(b); Open Records Decision No. 526 (1989). Thus, with the exception of the former teacher's name, courses taken, and degree obtained, we find the submitted transcripts are subject to section 552.102(b) of the Government Code.

You have marked information in Exhibit D that you assert 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 you have marked is subject to section 552.130.

You claim the social security number in the remaining information is excepted from disclosure under section 552.147 of the Government Code. This section provides "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Therefore, we find the social security number in the remaining information is subject to section 552.147 of the Government Code.

As previously stated, the requestor is a staff investigator with the TEA. The TEA investigator's request states she 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. Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 249.1. Chapter 249 of title 19 of the Texas Administrative Code governs disciplinary proceedings, sanctions, and contested cases involving SBEC. *See* 19 T.A.C. § 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) 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 instance, the TEA requestor states that she is investigating allegations made against the named former district employee and that she needs to review the requested records to determine whether measures need to be taken against the former employee's teaching credentials. Thus, we find the information at issue 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 discussed above, we find there is a conflict between these statutes and the right of access afforded to TEA investigators under section 249.14.

Where general and specific provisions 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 the 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 of the Government Code specifically protects Texas motor vehicle record information. Furthermore, because section 552.130 specifically permits release of information to certain parties and in certain circumstances that do not include the TEA's request in this instance, we conclude section 552.130 is not a general exception under the Act. Thus, the protection of sections 21.355 and 552.130 prevails over the general TEA right of access. We, therefore, conclude that, notwithstanding the provisions of section 249.14, the district must withhold the information marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and under section 552.130 of the Government Code.¹

Sections 552.102 and 552.147 of the Government Code, however, are general exceptions to disclosure. General exceptions in the Act cannot impinge on a statutory right of access to information. *See* Open Records Decision Nos. 613 at 4 (1993), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the requestor's statutory right of access under section 249.14 prevails and none

¹As our ruling is dispositive for this information, we need not address your remaining argument for portions of this information.

of the remaining information may be withheld under section 552.102 or section 552.147 of the Government Code.

In summary, the district must withhold the performance evaluation in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, and the marked Texas motor vehicle record information in Exhibit D under section 552.130 of the Government Code. The district must release the remaining information to the requestor pursuant to section 249.14 of title 19 of the Texas Administrative Code.²

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 351848

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Because the requestor 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.