



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 9, 2009

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

OR2009-17412

Dear 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# 363826.

The Garland Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency ("TEA") for information regarding a former district employee. You state that some of the information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, 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." In addition, the Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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. Upon review we find that some of the information in Exhibit B, which we have marked, consists of teacher evaluations for the purposes of section 21.355. However, you have submitted a copy of the Texas educator certificate for the individual at issue. The remaining information in Exhibit B pertains to a time prior to when the employee held a teaching certificate. Accordingly, this information may not be withheld under section 21.355.

You contend that Exhibit E 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. Upon review, we find that the Texas motor vehicle record information we have marked must be withheld under section 552.130 of the Government Code. We note that you have marked a driver's license number issued by the state of Virginia. Section 552.130 does not protect out-of-state driver's license or motor vehicle information. Therefore, section 552.130 is inapplicable to this information, and the district may not withhold the Virginia driver's license on this basis.

We note, and you acknowledge, 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. *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.

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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 instance, the TEA requestor states he is investigating changes to the former employee's criminal history and that he needs to review the requested records to determine whether measures need to be taken against this person's teaching credentials. Thus, we find that 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 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 section specifically permits release to certain parties and in certain circumstances that do not include TEA's request in this instance. Furthermore, section 552.130 of the Government Code specifically protects Texas motor vehicle record information and has its own release provisions. Thus, sections 21.355 and 552.130 prevail over the general TEA right of access. 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.

You assert that some of the remaining information is excepted under sections 552.102, 552.117, 552.137, and 552.147 of the Government Code.<sup>2</sup> However, these sections are general exceptions to disclosure that do not have their own release provisions. Therefore, TEA's statutory right of access under section 249.14 prevails, and none of the remaining

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<sup>2</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. 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 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release. *Id.* § 552.137. Section 552.147 excepts from disclosure the social security number of a living person. *Id.* § 552.147.

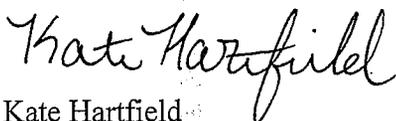
information may be withheld under these sections. *See* Open Records Decision No. 525 (1989) (exceptions to disclosure do not apply to information made public by other statutes).

In summary, the district must withhold the portions of Exhibit B we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the Texas motor vehicle record information we have marked in Exhibit E 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.<sup>3</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, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/eeg

Ref: ID# 363826

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>3</sup>Because TEA has a right of access to certain information in the submitted documents that otherwise would be exempted 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.