



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 31, 2012

Mr. Orlando Juarez, Jr.  
Counsel for the United ISD  
Escamilla, Poneck & Cruz  
2416 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2012-11956

Dear Mr. Juarez:

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# 460980.

The United Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for all information regarding a specified district employee. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 exception encompasses information other statutes make confidential. Section 21.355 of the Education Code provides, "[a] document evaluating the performance of a teacher . . . is confidential." *See* Educ. Code § 21.355(a). 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). We have determined for purposes of section 21.355, the term "teacher" means a person who is required to and does in fact hold a teaching certificate or permit under subchapter B of chapter 21 of the Education Code 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 Exhibit B, which consists of language-fluency evaluation forms, consists of evaluations of a teacher for purposes of section 21.355 of the Education Code and, thus, must be withheld under section 552.101 of the Government Code. However, we note the language-fluency forms determine whether an individual has met certain requirements allowing that individual to teach certain subjects, but do not evaluate the teaching

performance of the individual. Accordingly, we determine you have failed to demonstrate Exhibit B constitutes the evaluation of a teacher subject to section 21.355 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code provides, in relevant part, the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). The information in Exhibit C consists of teacher certification exam results. You state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Based on your representations and our review, we find this information is confidential pursuant to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

However, as noted above, in this instance, the requestor is a staff investigator with the TEA. The requestor 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. § 249.4. Section 249.14 provides in relevant part:

(a) The [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.

*Id.* § 249.14(a), (c). The requestor states she is investigating criminal history or allegations of misconduct of the named employee, which could warrant disciplinary action relating to that person's educator certification. Thus, we find the submitted information is generally subject to the right of access afforded to the TEA under section 249.14. However, because

Exhibit C is specifically protected from public disclosure by section 21.048 of the Education Code, we find there is a conflict between this statute and the right of access afforded to TEA investigators under section 249.14 of the Texas Administrative Code.

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 the TEA access to information relating to suspected misconduct on the part of an educator, section 21.048 of the Education Code specifically protects teacher certification exam results. This section specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. We therefore conclude that, notwithstanding the provisions of section 249.14, the district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with subsection 21.048(c-1) of the Education Code. The remaining information must be released.

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,



Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/bhf

Ref: ID# 460980

Enc. Submitted documents

c: Requestor  
(w/o enclosures)