ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 5, 2014

Mr. Orlando Juarez, Jr.
Counsel for the United Independent School District
J. Cruz & Associates, L.L.C.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2014-09686

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# 524960.

The United Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named district employee. You state you have released some of the requested information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.[1] 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. Section 552.101 encompasses information other statutes make confidential, such as section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides 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]We note, and you acknowledge, the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b), (e). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

> (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). Upon review, we agree the submitted information consists of teacher certification examination results. You state that neither subsection 21.048(c-1)(1) or subsection (2) is applicable in this instance. Therefore, we find the submitted information must generally be withheld under section 552.101 of the Government Code in conjunction with section 21.048 of the Education Code.

We note the TEA's request states the requestor 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.[2] Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits the TEA to obtain information that is otherwise protected by the statute 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) 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 [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). In this instance, the requestor states she is investigating allegations made against the named district employee, which could warrant disciplinary action relating to that person's educator certification. 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 statute

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[2]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).

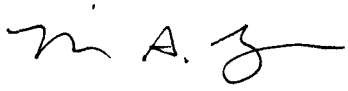
discussed above, we find there is a conflict between this statute and the right of access afforded to TEA investigators under section 249.14.

We note 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 educator certification test 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, notwithstanding the provisions of section 249.14 of title 19 of the Texas Administrative Code, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.048 of the Education 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 524960

Enc. Submitted documents

c: Requestor
(w/o enclosures)