



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 1, 2014

Mr. Hector M. Benavides
Counsel for the Northside Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2014-21611

Dear Mr. Benavides:

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# 545161.

The Northside 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 information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.115 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under [chapter 261 of the Family Code] and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* §§ 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). You contend some of the submitted information is confidential under section 261.201. We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). You state the information was obtained from the Child Protective Services Division of the Texas Department of Family and Protective Services and the district’s police department. Upon review, we find pages AG-0001 through AG-0008 consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of alleged or suspected abuse or neglect made by the Texas Department of Family and Protective Services. We find this information is within the scope of section 261.201(a)(1) of the Family Code. Therefore, the district must withhold pages AG-0001 through AG-0008 under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.¹

Section 552.101 of the Government Code also encompasses information made confidential by the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

¹As our ruling in regards to this information is dispositive, we need not address your remaining argument against disclosure of the information at issue.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find pages AG-0010 through AG-0013 constitute records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician. Accordingly, the district must withhold pages AG-0010 through AG-0013 under section 552.101 of the Government Code in conjunction with the MPA.²

Section 552.101 of the Government Code also encompasses information protected by section 21.355 of the Education Code, which provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). 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.” *Abbott v. North East Indep. Sch. Dist.*, 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 or 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 and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You contend pages AG-0014 through AG-0015 consist of a confidential evaluation of a district teacher by the district. You provide documentation showing the individual at issue was certified as a teacher by the State Board of Educator Certification and was acting as a teacher at the time her evaluation as a teacher was prepared. Based on your representations and our review, the district must withhold pages AG-0014 through AG-0015 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, we address your argument under section 552.115 of the Government Code. Section 552.115 excepts from disclosure “[a] birth or death record maintained by the bureau of vital statistics of the Texas Department of Health or a local registration official[.]” Gov’t Code § 552.115(a). Section 552.115 is applicable only to information maintained by the bureau of vital statistics or local registration official. *See* Open Records Decision No. 338 (1982). Therefore, because it is maintained by the district, the submitted birth certificate may not be withheld under section 552.115 of the Government Code.

²As our ruling in regards to this information is dispositive, we need not address your remaining argument against disclosure of this information.

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. 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 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) 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 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.

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 261.201(a)(1) specifically protects a report made under chapter 261 of the Family Code, section 159.002 of the MPA specifically protects medical records, and section 21.355 of the Education Code specifically protects documents evaluating the performance of teachers. These sections specifically permit release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Thus, we find section 261.201 of the Family Code, the MPA, and section 21.355 of the Education Code prevail over TEA's general right of access. We, therefore, conclude that, notwithstanding section 249.14 of title 19 of the Texas Administrative Code, the district must withhold the information that is excepted from

disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, the MPA, and section 21.355 of the Education Code.

In summary, the district must withhold pages AG-0001 through AG-0008 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold pages AG-0010 through AG-0013 under section 552.101 of the Government Code in conjunction with the MPA. The district must withhold pages AG-0014 through AG-0015 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The remaining submitted information must be released to this requestor.³

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,



Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 545161

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³Because the 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.