



February 2, 2015

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

OR2015-02046

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# 552332.

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 related to a named educator. You state the district has released some information to the requestor. 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 made confidential 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. In Open Records Letter No. 643, this office interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, we concluded a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* In addition, the Third Court of Appeals has held 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.).

You state Exhibit A constitutes a written reprimand of an individual who was employed by the district as a teacher when his performance was evaluated. We understand this individual held the appropriate certification under subchapter B of the Education Code at the time of the written reprimand. Based on your representations and our review, we find the district must generally withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

(c-1) 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). Upon review, we find the information in Exhibit B reflects the results of examinations administered under section 21.048 of the Education Code. You state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Accordingly, the district must generally withhold the information you have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code.

However, we note the requestor is an investigator with the TEA and states he is seeking the requested 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. § 249.14. 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.

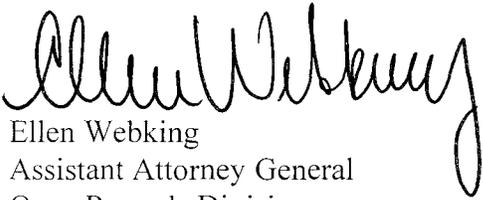
Id. § 249.14(a), (c). The requestor states the TEA has opened an investigation regarding the alleged misconduct or criminal history information of the teacher at issue, and the requestor requires the records in order to conduct a full and complete investigation. The requestor also states the alleged misconduct or criminal history information could warrant disciplinary action relating to the teacher's educator certification. Thus, we find the requestor may have a right of access to information regarding the teacher pursuant to section 249.14. However, because Exhibit A and Exhibit B are confidential under sections 21.355 and 21.048 of the Education Code, we find there is a conflict between sections 21.355 and 21.048 and the right of access afforded to TEA investigators under section 249.14.

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 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.). Section 249.14 generally provides TEA staff may obtain and investigate information concerning alleged improper conduct by an educator that would warrant SBEC denying relief to or taking disciplinary action against the educator or the educator's certificate. *See* 19 T.A.C. § 249.14(a). However, section 21.355 specifically protects "a document evaluating the performance of a teacher[.]" Educ. Code § 21.355. Additionally, section 21.048 of the Education Code specifically protects educator certification test results. Educ. Code § 21.048. Further, these provisions contain specific provisions regarding the release of information to certain parties and in certain circumstances that do not include the TEA's request in this instance. Thus, we find sections 21.355 and 21.048 prevail over the TEA's general right of access. Accordingly, notwithstanding the provisions of section 249.14 of the Texas Administrative Code, the district must withhold Exhibit A under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and the information in Exhibit B that is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must release the remaining information.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 552332

Enc. Submitted documents

c: Requestor
(w/o enclosures)