



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 17, 2015

Ms. Gabrielle C. Smith  
For the Carrollton-Farmers Branch I.S.D.  
Walsh, Anderson, Gallegos, Green and Trevino, P.C.  
P.O. Box 168046  
Irving, Texas 75016

OR2015-12026

Dear Ms. Smith:

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# 569047.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for the identity information, contact information, disciplinary history, and employment information relating to a named district employee. We understand some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> 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.

Initially, we note you have only submitted written reprimands regarding the named employee. To the extent any other information responsive to the request for information existed and was maintained by the district when it received the request, we assume it has been released. If

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

the district has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 other statutes make confidential, 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, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* In addition, the court 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.” *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

Upon review, we find the submitted information consists of “document[s] evaluating the performance of a teacher” as contemplated by section 21.355. *See* Educ. Code § 21.355(a). Therefore, provided the teacher was required to hold and did hold the appropriate certificate and was teaching at the time of the evaluations at issue, the submitted information is confidential under section 21.355 and must be withheld under section 552.101 of the Government Code.

We note the TEA’s request states it 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. § 249.4. 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 the [SBEC] denying relief to or taking disciplinary action against the person or certificate.

...

(c) 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). The requestor states the TEA has opened an investigation regarding the alleged misconduct or criminal history information of the teacher at issue, and

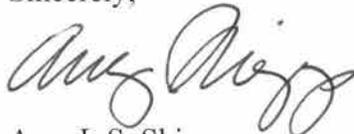
she requires the requested records in order to conduct a full and complete investigation. The investigator also states the alleged misconduct or criminal history information could warrant disciplinary action relating to the teacher's educator certification. Thus, we find the requestor may have a right of access to information regarding the teacher pursuant to section 249.14. However, because the information at issue is confidential under section 21.355 of the Education Code, we find there is a conflict between section 21.355 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. Further, section 21.355 specifically permits release to certain parties and in certain circumstances that do not include the TEA's request in this instance. Thus, we find section 21.355 prevails over the TEA's general right of access. Accordingly, notwithstanding section 249.14, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/akg

Ref: ID# 569047

Enc. Submitted documents

c: Requestor  
(w/o enclosures)