



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 16, 2015

Mr. Robb D. Decker
Counsel for Northside Independent School District
Walsh, Anderson, Gallegos, Green, and Trevino, P.C.
P. O. Box 460606
San Antonio, Texas 78246

OR2015-14471

Dear Mr. Decker:

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# 573000.

The Northside Independent School District (the "district"), which you represent, received a request for information pertaining to a named former district employee from an investigator with the Texas Education Agency (the "TEA"). 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 one page of responsive information. To the extent any other responsive information existed and was maintained by the district when it received this request for information, we presume the district has released it. If not, then the district must do so at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).

Next, you acknowledge, and we agree, the district failed to meet the statutory deadlines imposed by section 552.301 of the Government Code for the requested information. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.);

Hancock v. State Bd. of Ins., 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third party interests. See ORD 630. Section 552.101 of the Government Code can provide a compelling reason to withhold information. Therefore, we will consider the district’s argument under this exception.

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 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(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 teaching, as that term is commonly defined, at the time of the evaluation. See *id.* at 4.

The district contends the submitted information constitutes a written reprimand of an individual who was teaching when his performance was evaluated. You provide documentation showing the individual at issue was certified as a teacher by the State Board of Educator Certification (“SBEC”) at the time his evaluation as a teacher was prepared. Based on your representations and our review, the district must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note, however, the request for information indicates the requestor is seeking the requested information under the authority provided to the SBEC by section 249.14 of title 19 of the Texas Administrative Code.¹ Accordingly, we will consider whether section 249.14 permits the requestor to obtain information that is otherwise protected section 21.355 of the Education Code. See Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure).

¹Chapter 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).

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) 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 information at issue is subject to the general right of access afforded to the TEA under section 249.14. However, because the submitted information 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 contains 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 section 21.355 prevails 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 the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

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,

A handwritten signature in cursive script, appearing to read "Joseph Keeney".

Joseph Keeney
Assistant Attorney General
Open Records Division

JDK/eb

Ref: ID# 573000

Enc. Submitted documents

c: Requestor
(w/o enclosures)