



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 7, 2015

Ms. Veronica L. Garcia
Counsel for Livingston Independent School District
Walsh, Gallegos, Trevino, Russo, and Kyle P.C.
10375 Richmond Avenue, Suite 750
Houston, Texas 77042

OR2015-16355

Dear Ms. Garcia:

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# 574548.

The Livingston Independent School District (the "district"), which you represent, received a request from an investigator with the Texas Education Agency (the "TEA") for information relating to a named district employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.147 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. 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, we determined an "administrator" for purposes of section 21.355 means a person who is required to, and does in fact, hold an administrator's certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions as an administrator, as that term is commonly defined,

at the time of the evaluation. *See 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.).

You assert some of the submitted information consists of a written evaluation that is confidential under section 21.355. You inform us, and have submitted documentation reflecting, the administrator at issue held the appropriate certification at the time of the evaluation. Based on your representations and our review, we find the information you have marked constitutes an evaluation as contemplated by section 21.355. Accordingly, the district must generally withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov’t Code § 552.130. Upon review, we find you must generally withhold the motor vehicle record information we have marked under section 552.130 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). In this instance, the requestor states she is investigating allegations made against the named individual, 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 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.

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.). Although section 249.14 generally allows the TEA access to information relating to suspected misconduct on the part of an educator, section 21.355 of the Education Code specifically protects documents evaluating the performance of administrators and section 552.130 specifically protects motor vehicle record information. 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 21.355 of the Education Code and section 552.130 of the Government Code prevail over the TEA's general right of access. Therefore, we conclude that, notwithstanding section 249.14 of title 19 of the Texas Administrative Code, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with 21.355 of the Education Code and the information we have marked under section 552.130 of the Government Code.

Next, the district seeks to withhold portions of the remaining information under sections 552.102(a) and 552.147 of the Government Code. However, these sections are general exceptions to disclosure under the Act. Therefore, the TEA's statutory right of access under section 249.14 prevails and none of the remaining submitted information may be withheld under section 552.102(a) or section 552.147 of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act).

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The marked motor vehicle record information must be withheld under section 552.130 of the Government Code. The district must release the remaining information to this TEA requestor pursuant to section 249.14 of title 19 of the Texas Administrative 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,

A handwritten signature in cursive script that reads "Katelyn Blackburn-Rader".

Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 574548

Enc. Submitted documents

c: Requestor
(w/o enclosures)