



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 6, 2015

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

OR2015-20916

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# 582118.

The Northside Independent School District (the "district"), which you represent, received a request for information pertaining to a named educator from an investigator with the Texas Education Agency ("TEA"). You state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 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 Decision 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 seek to withhold AG-0001 through AG-0003 under section 21.355. We note AG-0003 consists of a reference feedback form completed during the application process by one of the employee’s references regarding her potential as a prospective teacher with the district. The submitted form evaluates the individual as she was engaged in the process of teaching. Upon review, we agree AG-0003 constitutes an evaluation for the purposes of section 21.355. Further, you indicate, and have submitted documentation showing, the individual held the appropriate teacher’s certificate at the time of the evaluation. Therefore, AG-0003 is confidential under section 21.355 and must be withheld under section 552.101 of the Government Code.

However, we note AG-0001 and AG-0002 pertain to the evaluation of the named employee as a Special Education Coordinator. Section 21.355 protects evaluations of only teachers and administrators who held the proper certifications and were performing the functions of teachers and administrators at the times of the evaluations. Upon review, we find the district has failed to demonstrate the information at issue evaluates the performance of a teacher or administrator for purposes of section 21.355. Accordingly, AG-0001 and AG-0002 are not subject to section 21.355 and may not be withheld under 552.101 of the Government Code on that basis.

We note the requestor is an investigator with the TEA and states she 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

he 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 requested information is subject to the general right of access afforded to the TEA under section 249.14. However, because some of 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 AG-0003 from this requestor under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

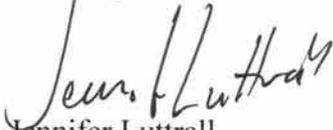
You seek to withhold AG-0004 and AG-0005 under section 552.107 of the Government Code. We note section 552.107 is a general exception to disclosure under the Act and does not have its own release provision. Therefore, the TEA's statutory right of access under section 249.14 of title 19 of the Texas Administrative Code prevails and none of the information at issue may be withheld from the requestor under section 552.107 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). Therefore, AG-0004 and AG-0005 must be released to this requestor in their entirety.

In summary, the district must withhold AG-0003 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must release the remaining information to this requestor.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 582118

Enc. Submitted documents

c: Requestor
(w/o enclosures)