



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2015

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

OR2015-12276

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# 567943.

The United Independent School District (the "district"), which you represent, received a request for information pertaining to a named individual from an investigator with the Texas Education Agency (the "TEA"). You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 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. Section 552.101 encompasses section 21.355 of the Education Code. Section 21.355 provides, in relevant part, "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). 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). 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." *See Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, this office concluded that 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.*

Upon review, we find Exhibit A consists of an evaluation for section 21.355 purposes. *See* Educ. Code § 21.355(a). Therefore, provided the teacher held the appropriate certificate and was teaching at the time of the evaluation at issue, the information in Exhibit A is confidential under section 21.355 and must be generally withheld under section 552.101 of the Government Code. However, if the teacher did not hold the appropriate certificate or was not teaching at the time of the evaluation at issue, then the information in Exhibit A is not confidential under section 21.355.

Section 552.101 also encompasses section 261.201 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see id.* §§ 101.003 (defining child for purposes of Family Code title 5), 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261). You state Exhibit B is confidential under section 261.201. Although the district is not an agency authorized to conduct an investigation under chapter 261, section 261.406 of the Family Code authorizes the Texas Department of Family and Protective Services to conduct investigations involving public schools under chapter 261. *See id.* §§ 261.103 (listing agencies that may conduct investigations under Fam. Code ch. 261), .406 (investigations in schools). Exhibit B relates to an investigation conducted by the Texas Department of Family Protective Services under chapter 261 of the Family Code. Based on your representations and our review of Exhibit B, we agree Exhibit B is confidential under section 261.201(a) of the Family Code. Accordingly, you must generally withhold Exhibit B from disclosure under section 552.101 of the Government 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 in Exhibit C you marked, in addition to the information we marked, under section 552.130 of the Government Code.

We note the TEA's request states the requestor is seeking this 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. Accordingly, we will consider whether section 249.14 of title 19 of the Texas Administrative Code permits the TEA to obtain information that is otherwise protected by the exceptions discussed above. *See* Open Records Decision No. 451 at 4 (1986) (specific access provision prevails over generally applicable exception to public disclosure).

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) The [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 [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). In this instance, the requestor states he 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.

We note 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 that 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 teachers, section 261.201(a)(1) specifically protects information used in a child abuse investigation under chapter 261 of the Family Code, 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, section 261.201 of the Family Code, and section 552.130 of the Government Code prevail over TEA's general right of access. Therefore, we conclude that, notwithstanding section 249.14 of title 19 of the Texas Administrative Code, if the teacher held the appropriate certificate and was teaching at the time of the evaluation at issue, you must withhold the information in Exhibit A under section 552.101 of the Government Code in conjunction with 21.355 of the Education Code. Further, we conclude, notwithstanding section 249.14 of title 19 of the Texas Administrative Code, you must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the information you marked, in addition to the information we marked, under section 552.130 of the Government Code.

In summary, if the teacher held the appropriate certificate and was teaching at the time of the evaluation at issue, the information in Exhibit A must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, if the teacher did not hold the appropriate certificate or was not teaching at the time of the evaluation at issue, the district may not withhold Exhibit A under section 552.101 on the basis of section 21.355. The district must withhold Exhibit B under section 552.101 in conjunction with section 261.201(a). The district must withhold the motor vehicle record information in Exhibit C that you marked, in addition to what we marked, under section 552.130 of the Government Code. The remaining information must be released.

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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/eb

Ref: ID# 567943

Enc. Submitted documents

c: Requestor
(w/o enclosures)