



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2016

Mr. Derrell A. Coleman
Counsel for the Carrollton-Farmers Branch Independent School District.
Walsh, Gallegos, Treviño, Russo & Kyle P.C.
P.O. Box 168046
Irving, Texas 75016

OR2016-15147

Dear Mr. Coleman:

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# 617657.

The Carrollton-Farmers Branch 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 indicate you will release some information to the requestor with redactions pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You state you will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.² You claim the submitted

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

²Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. See Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow

information is excepted from disclosure under sections 552.101, 552.102, and 552.107 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

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. 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 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 state the information in Exhibit D consists of evaluations of a teacher by the district. We understand this individual held the appropriate certification under subchapter B of the Education Code at the time of the evaluations and was engaged in the process of teaching at the time of the evaluations. Upon review, we find the information in Exhibit D consists of documents that evaluate the performance of a teacher for the purposes of section 21.355. Accordingly, the district must generally withhold the information at issue under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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

public access to the information. *See id.* § 552.024(c).

³Although you also raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we do not address your argument under section 552.101 of the Government Code. Further, although you raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege in this instance is section 552.107 of the Government Code. *See* ORD 676 at 1-2.

⁴We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 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 the requested information is specifically protected from public disclosure by section 552.101 of the Government Code in conjunction with 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.). 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. This section 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 of the Education Code prevails over the TEA's general right of access. Therefore, we conclude the district must withhold the information in Exhibit D under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

You also assert portions of the remaining information are excepted from disclosure under sections 552.102(b) and 552.107 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 information may be withheld under section 552.102(b) or section 552.107. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the remaining information must be released to this requestor in its entirety.

In summary, the district must withhold the information in Exhibit D 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.⁵

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/bw

Ref: ID# 617657

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵Because the TEA has a right of access to certain information in the submitted documents that otherwise would be excepted from release under the Act, the district must again seek a decision from this office if it receives a request for this information from a different requestor without such a right of access.