



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 26, 1997

Mr. Randel B. Gibbs
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR97-2177

Dear Mr. Gibbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109315.

The Lancaster Independent School District Police Department (the "police department") received a request for information relating to an investigation of indecency with a child. You claim that the requested information is excepted from disclosure based on sections 552.101 and 552.108 of the Government Code, as well as the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.¹ However, we conclude that the information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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:

¹We note that FERPA was amended, effective July 23, 1992, to provide that the term "education records" does not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." See 20 U.S.C. § 1232g(a)(4)(B)(ii).

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because the requested documents relate to an allegation of indecency with a child, we find that the documents are within the scope of section 261.201 of the Family Code. We assume that the police department has not adopted a rule that governs the release of this type of information. Given that assumption, the requested information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 (1986) at 2 (predecessor statute). Accordingly, the police department must withhold the requested documents from disclosure under section 552.101 of the Government Code as information made confidential by law.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 109315

Enclosures: Submitted documents

cc: Mr. Jerome S. Hennigan
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(w/o enclosures)