



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2003

Ms. Fancy H. Jezek  
Holbrook & Jezek  
P.O. Box 2548  
Harker Heights, Texas 76548-2548

OR2003-9234

Dear Ms. Jezek:

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# 193123.

The Killeen Independent School District (the "district"), which you represent, received a request for copies of all documents relating to a specific incident involving injury to a child. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.103, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.026 of the Government Code states that information contained in education records of an educational agency or institution must be released in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. § 1232g; *see also* Open Records Decision No. 634 at 6-8 (1995). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Under FERPA, "education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). The submitted information is both related to a student and maintained by the district and therefore subject to FERPA.

We note, however, that the some of the submitted information is also subject to the federal Child Abuse Prevention and Treatment Act ("CAPTA"). CAPTA conditions federal grant

funding for state child abuse prevention and treatment programs on the fulfillment of certain eligibility criteria and requires states to adopt methods to preserve the confidentiality of information concerning child abuse and neglect. *See* 42 U.S.C. § 5106a(b)(1)(A), § 5106a(b)(2)(A)(viii). Chapter 261 of the Family Code, which deals with investigations of reported child abuse or neglect, therefore makes confidential “the files, reports, records, communications, and working papers used or developed in an investigation under [chapter 261] or in providing services as a result of an investigation.” Fam. Code § 261.201(a)(2).

The submitted information includes a reporting form submitted to the Department of Protective and Regulatory Services (“DPRS”), an agency authorized to conduct an investigation under chapter 261. *See* Fam. Code § 261.103. Because this reporting form represents a communication developed in an investigation under chapter 261, it is confidential per section 261.201(a)(2).<sup>1</sup>

Therefore, with regard to the reporting form, the issue is the conflict of laws vis-à-vis a parent’s right of access to the education record of his child when that record is a communication developed in an investigation under chapter 261. There is an inherent conflict between the provisions of FERPA and those of chapter 261 of the Family Code. FERPA requires an educational agency to release education records to parents of minor students. *Cf.* Gov’t Code. § 552.114(b)(2)(granting right of access to the student’s parent or legal guardian). On the other hand, chapter 261 prohibits the disclosure of certain information concerning suspected child abuse.

We defer to the decision of the Family Compliance Office (“compliance office”) of the United States Department of Education, the office responsible for interpreting and construing FERPA, to resolve this conflict between FERPA and chapter 261. The compliance office found that the Texas statute was promulgated pursuant to CAPTA and that any statutory conflict would therefore be between the two federal statutes rather than the Texas statute and FERPA. As the two federal statutes were in irreconcilable conflict, the compliance office concluded that CAPTA governs, being the later enacted statute. *See* Letter from Leroy S. Rooker, Director, Family Policy Compliance Office, U.S. Department of Education,

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<sup>1</sup>We note that because the investigation has been referred to the DPRS, the requestor may be granted access to the DPRS’s records as the representative of a parent. Section 261.201(g) of the Family Code provides that DPRS, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

to Stacy Ferguson, Attorney, Schulman, Walheim & Heidelberg (Oct. 10, 1997); *see also Watt v. Alaska*, 451 U.S. 259, 267 (1981). Thus, the compliance office concluded that the CAPTA-compliant Texas Family Code provision concerning reporting suspected incidents of abuse or neglect prevailed over FERPA. We agree with the compliance office's ruling that CAPTA prevails over FERPA.

We note that there also exists a potential conflict between section 26.004 of the Education Code and chapter 261 of the Family Code. However, because chapter 261 was enacted pursuant to CAPTA, we conclude that any statutory conflict would actually be between CAPTA and section 26.004, rather than between the two Texas statutes. Such conflicts are governed by the Supremacy Clause, which provides that the laws of the United States "shall be the supreme Law of the Land [,] . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. State law that conflicts with federal law is preempted and "without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (citing *M'Culloch v. Maryland*, 17 U.S. 316 (1819)). Therefore, we conclude that in the instant case CAPTA also prevails over section 26.004. Consequently, under Texas law enacted in accordance with CAPTA, the reporting form is made confidential by section 261.201(a)(2) of the Family Code. Because section 552.101 of the Government Code excepts from disclosure information considered to be confidential by other statutes, we find that the reporting form is excepted from required public disclosure as information made confidential by law.

The remaining information may only be released in accordance with FERPA. The parent of a minor student has a right of access under FERPA to information relating to the student. *See* 20 U.S.C. § 1232g(a)(1); 34 C.F.R. § 99.10. In this instance, the requestor is an attorney for the parent of the student to whom the submitted information pertains. However, you indicate that the district has received no written consent from the parent to release this information to the requestor. Therefore, the remaining information must be withheld from the requestor at this time.<sup>2</sup>

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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<sup>2</sup>As our determinations under CAPTA and FERPA are dispositive of all information at issue, we do not reach your arguments under section 552.103.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

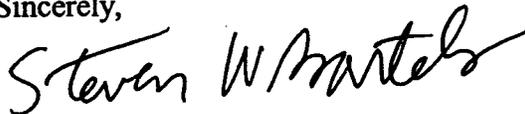
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels  
Assistant Attorney General  
Open Records Division

SWB/seg

Ref: ID# 193123

Enc. Submitted documents

c: Ms. Rachel W. Leach  
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(w/o enclosures)