



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 27, 2010

Mr. Leonard J. Schwartz  
General Counsel  
Texas School for the Deaf  
1102 South Congress Avenue  
Austin, Texas 78704

OR2010-11279

Dear Mr. Schwartz:

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# 388063.

The Texas School for the Deaf (the "school") received requests from two requestors for all records regarding their child. You state the school has provided some of the requested information to the requestors pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. *See* 20 U.S.C. § 1232g(a)(1)(A) (providing parents have right of access to own child's education records); *see also* 34 C.F.R. § 99.3 (defining "parents" and "education records"). You claim the submitted investigation records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestors. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we must address the school's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written

request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). In this instance, you state the school received the requests for information on May 14, 2010, and May 27, 2010. You did not, however, submit a copy of the first written request or a copy of the information requested until July 13, 2010. Thus, we find the school failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Next, you acknowledge the submitted investigation records constitute student education records subject to FERPA. *See* 34 C.F.R. § 99.3 (defining "education records"). You also acknowledge the requestors, in this instance, as parents of the child whose education records are at issue, generally have a right of access under FERPA to their own child's education records. *See* 20 U.S.C. § 1232g(a)(1)(A); *see also* 34 C.F.R. § 99.3 (defining "parent"). You claim, however, the submitted records are confidential under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the federal Child Abuse Prevention and Treatment Act ("CAPTA"). Thus, you assert the confidentiality of section 261.201 and CAPTA prevails over the requestors' right of access under FERPA.

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 was enacted in accordance with CAPTA. Section 261.201 generally makes confidential information pertaining to reporting or investigating alleged child abuse or neglect. *See* Gov't Code § 261.201.

The Family Compliance Office ("compliance office") of the United States Department of Education, which is responsible for interpreting and construing FERPA, addressed the

interplay between a parent's right of access under FERPA and the confidentiality provisions of section 261.201. The compliance office found section 261.201 was promulgated pursuant to CAPTA and any statutory conflict would, thus, be between the two federal statutes, rather than the state statute and FERPA. *See* Letter from Leroy S. Rooker, Director, Family Policy Compliance Office, U.S. Department of Education, to Stacy Ferguson, Attorney, Schulman, Walheim & Heidelberg (Oct. 10, 1997). After reviewing CAPTA and FERPA, the compliance office concluded CAPTA governs, being the later enacted statute, and, thus, the CAPTA-compliant Texas Family Code provision concerning reporting and investigating suspected incidents of child abuse or neglect prevails over FERPA. *Id.* Based on the compliance office's determination that CAPTA prevails over FERPA, we will address your claim that the submitted records are confidential under section 261.201 of the Family Code.

Section 261.201 provides in relevant part:

(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.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

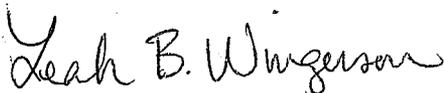
Fam. Code § 261.201(a), (k). You state the submitted records were used in investigations of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities

of minority removed for general purposes); *see also id.* § 261.003 (stating Fam. Code ch. 261 applies to investigation of reported abuse or neglect of student in Texas School for the Deaf). Based on your representations and our review, we find the submitted records are subject to section 261.201 of the Family Code. As previously noted, the requestors are the parents of the child victim listed in the records at issue. In this instance, however, the requestors are accused of committing the alleged abuse. As such, the submitted records may not be provided to the requestors pursuant to section 261.201(k). *Id.* § 261.201(k) (stating child's parent may not obtain information subject to section 261.201(a) concerning reported abuse or neglect of child if parent is alleged to have committed the abuse or neglect). Therefore, the school must withhold the submitted records under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 388063

Enc. Submitted documents

c: Requestors  
(w/o enclosures)