



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2012

Ms. Rosemary M. Marin
ScottHulse, P.C.
P.O. Box 99123
El Paso, Texas 79999-9123

OR2012-08505

Dear Ms. Marin:

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# 455466.

The Ysleta Independent School District (the "district"), which you represent, received a request for a specified security report and video. You state the district does not have any information responsive to the request for the specified video.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note, and you acknowledge, the submitted information is a student education record subject to the federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. *See* 34 C.F.R. § 99.3 (defining "education records"). You also acknowledge the requestors, as parents of the child whose education record is 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 contend, however, the submitted information is 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 section 261.201 and CAPTA prevail over the requestor's right of access under FERPA.

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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)(B)(viii). Chapter 261 of the Family Code was enacted in accordance with CAPTA. Information pertaining to reports or investigations of alleged or suspected child abuse or neglect is generally confidential under section 261.201 of the Family Code. *See* Fam. Code § 261.201(a).

The Family Compliance Office (the “compliance office”) of the United States Department of Education, which is responsible for interpreting and construing FERPA, has 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, so that any statutory conflict would thus be between the two federal statutes, FERPA and CAPTA, rather than FERPA and the state statute, section 261.201. *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 FERPA and CAPTA, the compliance office concluded CAPTA governs, being the later enacted statute, and thus the CAPTA-compliant Texas Family Code provision concerning reports and investigations of alleged or suspected 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 information is confidential under section 261.201 of the Family Code.

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. This section encompasses information made confidential by other statutes, such as section 261.201(a) of the Family Code which provides as follows:

[T]he 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:

- (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). You assert the submitted security report prepared by the district is excepted from disclosure under section 261.201 of the Family Code. We note the district is not an agency authorized to conduct an investigation under Chapter 261 of the Family

Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, we find the submitted information consists of a report of alleged or suspected abuse made to the El Paso Police Department under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (defining “abuse” for purposes of chapter 261 of the Family Code as including offense of sexual assault under section 22.011 of the Penal Code); *see also* Penal Code § 22.011 (defining “child” for purposes of sexual assault of a child as person under 17 years of age). Therefore, the submitted information is confidential under section 261.201(a)(1) of the Family Code and must be withheld under section 552.101 of the Government Code. As this ruling is dispositive of the submitted information, we need not consider your remaining arguments against disclosure.

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, 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,

A handwritten signature in cursive script that reads "Kathryn R. Mattingly". The signature is written in black ink and is positioned above the typed name and title.

Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 455466

Enc. Submitted documents

c: Requestor
(w/o enclosures)