



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2014

Ms. Sandi Pearson Tarski
Counsel for Carroll Independent School District
Walsh, Anderson, Gallegos, Green, and Treviño, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2014-07005

Dear Ms. Tarski:

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# 520866.

The Carroll Independent School District (the "district"), which you represent, received a request for information pertaining to reports regarding the requestor's son and family during a specified time period, as well as notes written about the family during a specified time period. You state you do not have any information responsive to the second part of this request.¹ The district received a second request for two specified reports provided to the district by a named police officer regarding the requestor's son. You claim the submitted information is 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 from the requestor's attorney. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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).

The submitted information consists of student education records subject to the 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"). The requestor is the parent of the child whose education records are at issue and generally has a right of access under FERPA to this 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.

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), (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 the submitted information is confidential under section 261.201 of the Family Code.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201 provides in 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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); *see id.* §§ 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261), 101.003 (defining child for purposes of Family Code title 5). 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 or neglect investigations). However, you inform our office that the Southlake Police Department (the “department”) has advised the district that all of the submitted information is confidential under section 261.201(a) because the submitted information was used or developed in the department’s investigation under chapter 261. Based on your representations and our review of the information at issue, we agree the submitted information is confidential under section 261.201(a) of the Family Code. We note section 261.201(k) permits the investigating agency to release information relating to an investigation under chapter 261 to a parent of the child who was the subject of the alleged or suspected abuse or neglect, unless the parent is alleged to have committed the abuse or neglect. *See id.* § 261.201(k). However, although the requestor is the parent of the child concerned, section 261.201(k) is not applicable because the district is not the agency that conducted the investigation. We therefore conclude the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 520866

Enc. Submitted documents

c: Requestor
(w/o enclosures)