



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 26, 2012

Ms. Meridith L. Hayes
For Coppell Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR2012-09834

Dear Ms. Hayes:

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# 457272.

The Coppell Independent School District (the "district"), which you represent, received a request for records relating to the requestor's clients and their children; records relating to the professional qualifications of two named district employees; all complaints against the two named employees for a specified time period; the names, titles, work e-mail addresses, work telephone numbers, and resumes of all staff with educator certification at a specified school for a specified time period; and all telephone billing records for the school for a specified time period.¹ You claim the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge this request for information was ruled upon in Open Records Letter No. 2011-16299 (2011). In that ruling, we determined the district must withhold some information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and section 21.355 of the Education Code, and sections 552.117 and 552.137 of the Government Code, and must release the remaining information. You now submit an additional document for our review and assert section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. You acknowledge the district failed to meet the deadlines prescribed by

¹We note the authority sought and received clarification of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

section 552.301 of the Government Code in requesting an open records decision from this office with respect to the newly submitted information. *See* Gov't Code § 552.301(e). 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 that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will address the applicability of this section to the submitted information. However, you must continue to follow Open Records Letter No. 2011-16299 with respect to the remaining requested information.

We understand you to assert the submitted document is a student education record 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"). You also acknowledge the 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.

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 DOE, 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, being the later enacted statute, governs, 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 excepts 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 that other statutes make confidential, such as section 261.201 of the Family Code, which 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 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); *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, upon review, we find a portion of the submitted information reveals the identity of a person who reported possible child abuse to the Child Protective Services Division of the Texas Department of Family and Protective Services. *See id.* § 261.001(1) (defining "abuse" for purposes of section 261.201); *id.* § 101.003(a) (defining "child" as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Therefore, the information we have marked falls within the scope of section 261.201(a)(1). Thus, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. However, the remaining information does not contain a report of alleged or suspected abuse or neglect made under this chapter or the identity of the person making the report. Further, you do not explain, and the remaining information does not reflect, that it relates to files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 or in providing services as a result of such an investigation. Therefore, the remaining information is not confidential under section 261.201 and may not be withheld on that basis under section 552.101.

You assert the remaining information is confidential under section 261.101 of the Family Code. Section 552.101 of the Government Code also encompasses section 261.101 of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See id.* § 261.101(d). As noted above, the remaining information does not contain the identity of a person making a report under chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 261.101(d).

In summary, except for the newly submitted document, the department must continue to follow our ruling in Open Records Letter No. 2011-16299. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and release the remaining information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 457272

Enc. Submitted documents

c: Requestor
(w/o enclosures)