



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2014

Ms. Meredith L. Hayes
Counsel for the Carrollton-Farmers Branch Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR2014-04737

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# 517356.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for copies of material that are personally identifiable to the requestor's child both in paper or electronic form. 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.

Initially, we note you have only submitted one document for our review. To the extent any other responsive information existed on the date the district received the present request for information, we assume any such information has been released. If the district has not released this information, it must do so at this time. *See* Gov't Code §§ 552.301 (a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

You acknowledge the submitted information consists of student education records subject to the Family Educational Rights and Privacy Act ("FERPA"). *See* 34 C.F.R. § 99.3 (defining "education records"). You also acknowledge the requestor is the parent of the child whose education records are at issue, 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 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 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 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. 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.

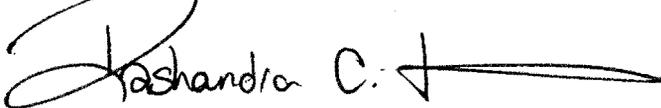
Section 552.101 of the Government Code also encompasses section 261.101(d) of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See id.* § 261.101(d). As noted above, the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find none of the remaining information contains the identifying information of an individual who made a report under chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.101(d) of the Family Code.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The remaining information must be released.

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,

A handwritten signature in black ink that reads "Rashandra C." followed by a long horizontal flourish.

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 517356

Enc. Submitted documents

c: Requestor
(w/o enclosures)