

filed
5-22-24
2:40 p.m.
of Lake

IN THE District COURT OF
Fannin COUNTY, TEXAS
336 JUDICIAL DISTRICT

STANDING ORDER REGARDING PUBLIC ACCESS TO DFPS COURT RECORDS

On the 22 day of May, 2024, the Court considered the following and issues findings and orders related to pleadings, orders, and documents filed in a suit brought by the Department of Family and Protective Services, (hereinafter referred to as "DFPS") pursuant to Chapters 261, 262, and 264 of the Texas Family Code.

The Court finds that the Child Abuse Prevention and Treatment Act (CAPTA) generally requires that states preserve the confidentiality of all child abuse and neglect reports and records to protect the rights of the child and the child's parents or guardians. 42 U.S.C.A. 5106a(b)(2)(B)(viii).

The Court finds that CAPTA provides for the use of discretion regarding public access to court proceedings involving child and abuse cases, provided that the State, "at a minimum, ensure(s) the safety and well-being of the child, parent, and families." 42 U.S.C.A. 5106a(b)(2).

The Court finds that the plain language of Texas Family Code 261.201 deems DFPS records of alleged and abuse or neglect to be confidential and not subject to public release absent a court order following an in-camera inspection and a finding of necessity.

The Court finds that these pleadings, orders, and documents contain sensitive information regarding children who have been or may have been abused or neglected by parties responsible for their care.

The Court finds that these pleadings, orders, and documents contain sensitive information regarding family members, specifically regarding the parents of the children who may be alleged perpetrators of abuse or neglect.

The Court finds that because of the sensitive information contained within these pleadings, orders, and documents, it is necessary to restrict public access to these pleadings, orders, and documents.

The Court finds that restricting public access to these pleadings, orders, and documents would protect the privacy rights of both children and other family members, including the parents of the children.

The Court further finds that it has authority to control access to its own records.

IT IS THEREFORE ORDERED that public access to pleadings, orders, and documents filed in a suit brought by DFPS pursuant to Chapters 261, 262, and 264 of the Texas Family Code are to be restricted and shall be maintained by the District Clerk of Fannin County as such. The Clerk of the Court shall not allow public access to these pleadings, orders, and documents other than to

DFPS, the parties, their attorneys, the attorney ad litem and the guardian ad litem unless specifically permitted and ordered by this Court.

The Clerk is directed to:

- a. File a copy of this order with the District Clerk of Fannin County, Texas;
- b. Cause a copy of this order to be provided to each attorney designated by this Court as attorney ad litem for children or parents;
- c. Send a copy of this order to the appropriate CASA agency for this Court; and
- d. Submit a copy of this order to the District Judge of Fannin County, Texas.

SIGNED this 22 day of May, 2024.



JUDGE PRESIDING

Statutory and Case Law Support for Restricting Public Access to**Child Protective Services (CPS) and Child Protective Investigations (CPI) Court Records**

This Court, by judicial decision and in accordance with the Texas' Public Information Act, is authorized to restrict its records from public disclosure. TEX. GOV'T CODE § § 552.101, 552.003(1)(B). ("Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.") TEX. GOV'T CODE § 552.101. *See Hardy v. Hearn*, No. B14-89-00845-CV, 1989 WL 119572 at *1 (Tex. App. Oct. 12, 1989). (A trial court's order that required defendant's addresses and phone numbers to remain confidential until counsel was obtained was a judicial decision and not subject to disclosure by the Open Records Act). *Id.*

Under federal law, the Child Abuse Prevention and Treatment Act (CAPTA) generally requires that states preserve the confidentiality of all child abuse and neglect reports and records to protect the rights of the child and the child's parents or guardians. 42 U.S.C.A. 5106a(b)(2)(B)(viii). Further, CAPTA provides for the use of discretion regarding public access to court proceedings involving child abuse and neglect cases, provided that the State, "at a minimum, ensure(s) the safety and well-being of the child, parents and families." 42 U.S.C.A. 5106a(b)(2).

Texas Family Code Section 261.201 closely tracks the CAPTA confidentiality requirements. By its plain language, it deems all records of alleged child abuse or neglect confidential and not subject to public release absent a court order following an in-camera inspection and a finding of necessity. Section 261.201 specifically includes as confidential "a report of alleged or suspected child abuse or neglect, the identity [of the reporter], and the files, reports, records, communications, audiotapes, videotapes, and working papers *used or developed during investigation or in providing services as a result of the investigation* (emphasis added)." TEX. FAM. CODE § 261.201; *See Coachman v. State*, 692 S.W.2d 940, 945 (Tex. App.—Houston [1st Dist.] 1985, pet. ref'd) (concluding CPS records are confidential under state law and cannot be disclosed absent a showing of necessity, citing the predecessor to TFC § 261.201); *In re Duffer*, 438 S.W.3d 864 (Tex. App. 2014) ("In the absence of an order requiring production, the Department is required by statute to keep the contents of [its] files confidential.").

Significantly, Texas Family Code Section 263.008, entitled Foster Children's Bill of Rights, though without defining its scope, includes the right to confidentiality of the child's records. TEX. FAM. CODE § 263.008. Specifically, Texas Family Code § 263.008(b)(12) states that "It is the policy of this state that each child in foster care be informed of the child's rights provided by state or federal law or policy that relate to:" "confidentiality of the child's records." *Id.*

Further, although not a confidentiality statute per se, Texas Family Code Section 262.106 provides an avenue for the blanket closure of CPS court cases during the initial hearing after a child is removed in an emergency without a court order. Courts are directed to "to render orders that are necessary to protect the physical health and safety of the child." TEX. FAM. CODE §

262.106. This language is consistent with the aforementioned CAPTA provision that gives courts the discretion to ensure the “safety and well-being of the child” in how the public is allowed to access court proceedings in child abuse and neglect cases. 42 U.S.C.A. 5106a(b)(2)(B)(viii).

Therefore, all premises considered, the **DEPARTMENT** respectfully requests that this Court restrict the public access to its CPS and CPI records by closing these court records to the public. The **DEPARTMENT** further requests unless specifically permitted and ordered by this Court, only parties to a case, their attorneys, and the attorney ad litem and guardian for a child be permitted access these records.