



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2009

Mr. Mark Daniel
Evans, Daniel, Moore & Evans
Sundance Square
115 West Second Street, Suite 202
Fort Worth, Texas 76102

OR2009-06199

Dear Mr. Daniel:

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# 343182 (your ID# 09-088).

The Watauga Police Department (the "department"), which you represent, received a request for affidavits related to the arrest of a named individual on a specified date. You claim that portions of the submitted affidavits are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute. Gov't Code § 552.101. Section 261.201(a) of the Family Code provides as follows:

(a) The 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). We note that the submitted documents pertain to an investigation conducted by the department of alleged sexual performance by a child. The definition of abuse under chapter 261 includes “compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code.” *Id.* § 261.001(1)(G). Because the documents at issue pertain to the arrest of an individual for violation of section 43.25 of the Penal Code, “Sexual Performance by a Child,” we conclude that the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code. *See id.*; *see also* Penal Code § 43.25(b) (providing that a person commits an offense if “he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or sexual performance”). Thus, the submitted information falls within the scope of section 261.201(a). You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the requested documents are confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold these documents in their entirety under section 552.101 of the Government Code as information made confidential by law. As our ruling is dispositive, we need not address 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 at (512) 475-2497.

Sincerely,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 343182

Enc. Submitted documents

c: Requestor
(w/o enclosures)