



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2009

Ms. M. Ann Montgomery
Assistant County and District Attorney
Ellis County and District Attorney's Office
1201 North Highway 77 Suite 104
Waxahachie, Texas 75165-7832

OR2009-11129

Dear Ms. Montgomery:

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# 351797.

The Ellis County Jail (the "county") received a request for information relating to a charge of sexual assault of a child involving a named individual. You claim that most of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note that the requestor does not seek access to some of the submitted information. Instead, her request specifically encompasses only "[t]he basic offense and arrest information" and "[t]he Search Warrant, Search Warrant Affidavit, Arrest Warrant, Arrest Warrant Affidavit and any Arrest Report – Book In report created separately from the Offense Report." Thus, to the extent that the county has submitted other types of information, such information is not responsive to this request. This decision does not address the public availability of any information that is not responsive to this request, and the county need not release such information in response to the request.

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. You raise section 552.101 in conjunction with section 261.201 of the Family Code, which provides in part:

- (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 [the Family 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

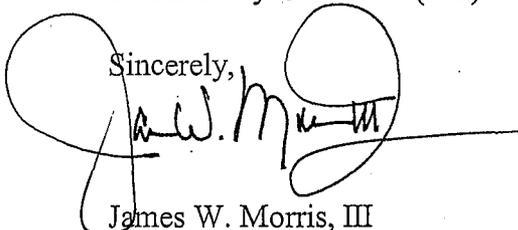
(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the submitted information consists of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of alleged child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (definition of “abuse” under Fam. Code § 261.001(1) includes sexual assault under Penal Code § 22.011). As you do not indicate that the county has adopted a rule that governs the release of this type of information, we assume that no such rule exists. Given that assumption, we conclude that the county must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute). Moreover, because section 261.201(a) protects all “files, reports, records, communications, audiotapes, videotapes [and] working papers” that are related to an investigation of alleged child abuse, the county must not release basic front-page information in such cases. As we are able to make this determination, we need not address your other 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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a large, stylized flourish extending to the left and underlining the name.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 351797

Enc: Submitted documents

c: Requestor
(w/o enclosures)