



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2011

Mr. Ricardo R. Lopez
Rogers, Morris & Grover, L.L.P.
517 Soledad Street
San Antonio, Texas 78205

OR2011-02524

Dear Mr. Lopez:

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# 409549.

The North East Independent School District (the "district"), which you represent, received a request for all documents in possession of the district's superintendent or police department that pertain to a specified incident. You claim the submitted information is excepted from disclosure under section 552.108 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 public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. This section encompasses section 261.201 of the Family Code, which provides as follows:

(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 [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 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). In this instance, you provide an e-mail from a captain with the district's police department (the "department") stating, and the submitted report reflects, that this report involves an active investigation by the department of alleged indecency with a child. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of Fam. Code ch. 261 includes indecency with a child under Penal Code section 21.11); *see also* Penal Code § 21.11 (defining "child" for purposes of section 21.11 as a minor younger than 17 years of age). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). However, this investigation is being conducted by the department, which is so authorized. Thus, we find the submitted report is within the scope of section 261.201(a). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, we find the submitted report is confidential pursuant to section 261.201 of the Family Code and the district must withhold it in its entirety under section 552.101 of the Government Code.²

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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tf

²As our ruling is dispositive, we need not address your argument against disclosure.

Ref: ID# 409549

Enc. Submitted documents

c: Requestor
(w/o enclosures)