

created or maintained by the Texas Department of Protective and Regulatory Services is confidential and not subject to public release. Section 261.201(a) specifically provides that:

(a) The following information is confidential, is not subject to public release under Chapter 5552, 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, audio tapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

TEX. FAM. CODE § 261.201(a).

III.

The Texas Family Code, in § 261.201(b), does provide a procedure under which information the Texas Department of Protective and Regulatory Services believes is confidential may be released. Specifically, that section provides that:

- (b) A court may order the disclosure of information that is confidential under this section if:
 - (1) a motion has been filed with the court requesting the release of the information;
 - (2) a notice of hearing has been served on the investigating agency and all other interested parties; and
 - (3) after hearing and an in camera review of the requested information, the court determines that the disclosure of the requested information is:

- (A) essential to the administration of justice; and
- (B) not likely to endanger the life or safety of:
 - (i) a child who is the subject of the report of alleged or suspected abuses or neglect;
 - (ii) a person who makes a report of alleged or suspected abuse or neglect; or
 - (iii) any other person who participates in an investigation of reported abuse or neglect or who provides care for the child (sic).

TEX. FAM. CODE § 261.201(b).

IV.

In support of this motion, defendant shows the following:

1. The items requested are in the exclusive possession, custody and control of the State of Texas or the United States Government by and through its agents, the police, the Texas Department of Protective and Regulatory Services, or the prosecuting attorney's office, and the defendant has no other means of ascertaining the disclosures requested.
2. The items and information requested are essential to the administration of justice, and are material to this cause and to the issues of guilt or innocence or punishment to be determined this cause.
3. The defendant cannot safely go to trial without such information and inspection, nor can the defendant adequately prepare the defense to the charges against him.
4. That absent such discovery the defendant's rights under Article 39.14 of the Texas Code of Criminal Procedure, Article I, §§ 10, 13 and 19 of the Constitution of the State of Texas, and the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America will be violated.

WHEREFORE, PREMISES CONSIDERED, defendant respectfully prays that this

Court will set this matter down for a hearing prior to trial on the merits, and that at such hearing any information not meeting the requirements of § 261.201(a) of the Texas Family code be ordered immediately produced to counsel for the defendant for inspection, copying and/or photographing. Defendant further requests that any information this Court determines does meet the requirements of § 261.201(a) e reviewed in camera, and any and all information or records meeting the provisions of § 261.201(b) be ordered immediately produced to counsel for the defendant for inspection, copying and/or photographing. As neither defendant nor his counsel is aware of the potential “interested parties,” defendant additionally requests that the State be ordered to provide the notice of the hearing required by § 261.201(b)(2).

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion for Discovery of Records Considered Confidential Under § 261.201 of the Texas Family Code has been delivered to the Bexar County District Attorney's Office, 101 W. Nueva, San Antonio, Texas, on July 12, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered Motion for Discovery of Records Considered Confidential Under § 261.201 of the Texas Family Code, and it is hereby

ORDERED that this matter shall be set for a hearing to be held on:

_____, 2018 at _____ o'clock ___ m.; and it is

FURTHER ORDERED that the State's prosecuting attorney shall provide the required notice of this hearing to all interested agencies and parties required by § 261.201(b)(2) of the Texas Family Code.

Signed on this the _____ day of _____, 2018.

JUDGE PRESIDING