ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2014

Ms. Andrea D. Russell
Counsel for the City of Southlake
Taylor Olson Adkins Sralla Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2014-08498

Dear Ms. Russell:

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# 523229.

The Southlake Department of Public Safety (the "department"), which you represent, received a request for information pertaining to two specified case numbers. You state the department will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code and social security numbers pursuant to section 552.147(b) of the Government Code.[1] You also state the department will withhold certain information pursuant to Open Records Decision No. 684 (2009).[2] We understand the department has provided some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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[1]Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

[2]Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

Initially, we note portions of the requested information were the subject of previous requests for information, in response to which this office issued Open Records Letter No. 2014-06086 (2014). In Open Records Letter No. 2014-06086, we concluded the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, for the requested information that is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2014-06086 as a previous determination and withhold the identical information in accordance with that ruling.[3] *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Next, we address your arguments against the disclosure of the submitted information that is not subject to this prior ruling.

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 section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

> (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 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 [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). You contend the remaining information pertains to an investigation of alleged or suspected child abuse or neglect and falls within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of this section

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note the remaining information relates to an administrative investigation by the City of Southlake's (the "city") police department of a city police officer. We find you have failed to demonstrate how the remaining information involves a report of alleged or suspected abuse or neglect of a child made under chapter 261 of the Family Code, or how this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the department may not withhold the remaining information under section 552.101 on that basis.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and that does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App —El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You inform us the remaining information pertains to a criminal investigation conducted by the city's police department that concluded in a result other than conviction or deferred adjudication. However, the information at issue reflects it was generated as part of an internal investigation conducted by the department that was purely administrative in nature. You do not provide any arguments explaining how the internal investigation resulted in a criminal investigation or prosecution. Therefore, you have failed to demonstrate the applicability of section 552.108(a)(2) to the remaining information, and the department may not withhold the remaining information on that basis.

In summary, the department must continue to rely on Open Records Letter No. 2014-06086 as a previous determination and withhold the identical information in accordance with that ruling. The department must release the remaining information.[4]

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.

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[4]We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates, or that party's representative, solely on grounds that information is considered confidential by privacy principles).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 523229

Enc. Submitted documents

c: Requestor
(w/o enclosures)