



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Ms. Julie P. Doshier
Counsel for City of Farmers Branch
Nichols, Jackson, Dillard, Hager, and Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR2016-16845

Dear Ms. Doshier:

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# 620378 (City Reference# 77013).

The City of Farmers Branch (the "city"), which you represent, received a request for a specified city police department internal affairs investigation. You state the city will redact motor vehicle record information under section 552.130(c) of the Government Code and information pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, 552.136, 552.137, 552.140, and 552.147 of the Government Code. We have

¹Section 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). Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold certain categories of information without the necessity of requesting an attorney general decision, including L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code.

considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-12716 (2016). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2016-12716 as a previous determination and withhold the identical information at issue in accordance with that ruling. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the requested information is not subject to the previous ruling, we will consider your arguments against disclosure of the information at issue.

Next, we note the submitted information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestors.

Next, we note the submitted information includes a city police officer's body worn camera recording. Body worn cameras are subject to chapter 1701 of the Occupations Code. Chapter 1701 provides the procedures a requestor must follow when seeking a body worn camera recording. Section 1701.661(a) provides:

A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

Occ. Code § 1701.661(a). In this instance, the requestor does not give the requisite information under section 1701.661(a). As the requestor did not properly request the body worn camera recording at issue pursuant to chapter 1701, our ruling does not reach this information and it need not be released. However, pursuant to section 1701.661(b), a "failure to provide all the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information." *Id.* § 1701.661(b).

Section 552.101 of the Government Code also encompasses 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). Upon review, we find part of the remaining information was used or developed in an investigation by the Addison Police Department (“APD”) of alleged or suspected child abuse or neglect; thus, this information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). As we have no indication APD has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Therefore, the city must withhold the information at issue, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.³

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a governmental body possesses information relating to a pending case of another law enforcement agency, the governmental body may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a

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

representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. We note the submitted information consists of an ongoing internal investigation of the city police department. Section 552.108 is generally not applicable to purely administrative records that do 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. 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). However, you have submitted comments from APD in which it objects to the release of the remaining information because it pertains to a pending criminal prosecution. Furthermore, the remaining information reflects the investigation at issue relates to the officer involved in the incident giving rise to the pending criminal case. Based on this representation, we conclude the release of the remaining information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of APD.⁴

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the city must continue to rely on Open Records Letter No. 2016-12716 as a previous determination and withhold the identical information at issue in accordance with that ruling. The TCOLE identification number in the submitted information is not subject to the Act and need not be released to the requestor. As the requestor did not properly request the submitted body worn camera recording pursuant to chapter 1701 of the Occupations Code, our ruling does not reach this information and it need not be released. The city must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The city may withhold the remaining information on behalf of APD under section 552.108(a)(1) of the Government Code.

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.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

⁴As our ruling is dispositive, we do not address your remaining arguments to withhold this information.

information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Ramsey Abarca", with a long, sweeping horizontal stroke extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bhf

Ref: ID# 620378

Enc. Submitted documents

c: Requestor
(w/o enclosures)