



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 30, 2015

Ms. Mary Ann Powell
Counsel for the City of Stafford
Olson & Olson, L.L.P.
2727 Allen Parkway, Suite 600
Houston, Texas 77019

OR2015-13116

Dear Ms. Powell:

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# 569338 (Ref. No. COS15-017A).

The Stafford Police Department (the "department"), which you represent, received a request for information pertaining to a specified incident involving the requestor. You state the department will redact certain motor vehicle record information under section 552.130(c) of the Government Code and social security numbers under section 552.147(b) of the Government Code.¹ 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.

Initially, we note the submitted information was the subject of a previous request for information from the same requestor, in response to which this office issued Open Records Letter No. 2015-11876 (2015). In that ruling, we determined 1) the department must

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). 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).

withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, 2) the department must release the marked court-filed document pursuant to section 552.022 of the Government Code, and 3) with the exception of basic information, which must be released, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. The Act does not permit selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). Information that has been released to a member of the public may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007(a); Open Records Decision Nos. 518 at 3 (1989), 490 at 2 (1988). You seek to withhold, under section 552.108 of the Government Code, the court-filed document and basic information which we previously determined the department must release. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, the department may not now withhold this previously released information under section 552.108. However, because section 552.101 of the Government Code can make information confidential under the Act, we will consider your argument under this section for the previously released information. Furthermore, while you previously represented the submitted information related to an open investigation subject to section 552.108(a)(1) of the Government Code, you now inform us the investigation is concluded and claim section 552.108(a)(2) of the Government Code. Thus, we find the circumstances have changed and the department may not rely on Open Records Letter No. 2015-11876 as a previous determination in this instance. Accordingly, we will consider your argument under section 552.101 of the Government Code for the whole of the submitted information and your argument under 552.108(a)(2) of the Government Code for the submitted information not previously ordered released in Open Records Letter No. 2015-11876.

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 made confidential by other statutes, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, 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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k). You assert the submitted information is protected under section 261.201. We note, however, the submitted information pertains to interference with child custody. Thus, we find the entirety of the submitted information is not subject to section 261.201(a) of the Family Code. However, we note the submitted information contains records developed in an investigation by the Child Protective Services Division of the Texas Department of Family and Protective Services (“CPS”) of alleged child neglect. *See id.* § 261.001(4) (defining “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had disabilities of minority removed for general purposes). Upon review, we find the information pertaining to the child neglect report, which we have marked, is subject to chapter 261 of the Family Code. Although the requestor is a parent of the child victim, the requestor is the individual alleged to have committed the alleged neglect. Further, the department is not the investigating agency for purposes of section 261.201(k). *See id.* § 261.201(k). Thus, the requestor does not have a right of access to the submitted information under section 261.201(k). *See id.* Therefore, we conclude the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

Section 552.108(a)(2) of the Government Code exempts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must

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

demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A); Open Records Decision No. 434 (1986). You state the remaining information pertains to a concluded criminal investigation that did not result in conviction or deferred adjudication. Accordingly, with the exception of the information previously ordered released in Open Records Letter No. 2015-11876, the department may withhold the remaining submitted information under section 552.108(a)(2) of the Government Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the information previously ordered released in Open Records Letter No. 2015-11876, the department may withhold the remaining submitted information under section 552.108(a)(2) 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 information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/dls

Ref: ID# 569338

Enc. Submitted documents

c: Requestor
(w/o enclosures)