



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 28, 1998

Ms. E. Cary Grace  
Assistant City Attorney  
City of Houston  
Legal Department  
P. O. Box 1562  
Houston, Texas 77251-1562

OR98-2521

Dear Ms. Grace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119041.

The Houston Police Department (the "department") received an open records request for certain gang-related information, including a monthly breakdown of gang-related crimes, a list of current gangs and a breakdown of each gang's membership by ethnicity, age group, and gender, and the number of juveniles and adults who have been purged from the anti-gang task force database. You contend that the requested information is made confidential under article 61.05 of the Code of Criminal Procedure and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Article 61.02 of the Code of Criminal Procedure provides that a criminal justice agency may compile criminal information for the purpose of investigating or prosecuting the criminal activities of a criminal "combination." Section 71.01(a) of the Penal Code defines "combination" in pertinent part as "three or more persons who collaborate in carrying on criminal activities." Although section 71.07(d) of the Penal Code separately defines "criminal street gang" as "three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the

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<sup>1</sup>Because we resolve this portion of your request pursuant to section 552.101 of the Government Code, we need not address the applicability of section 552.108.

commission of criminal activities,” we believe “criminal street gang” to be a subcategory of a criminal “combination.” We therefore will consider the applicability of section 61.05 of the Code of Criminal Procedure to the records at issue.

Article 61.03 of the Code of Criminal Procedure specifically provides that a criminal justice agency may release criminal combination information to 1) another criminal justice agency, 2) a court, 3) a defendant in a criminal proceeding who is otherwise entitled to the discovery of the information, or 4) a “regional database.” Article 61.05(a)(2), in conjunction with article 61.05(b), makes it a Class A misdemeanor to release criminal combination information “to a person who is not entitled to the information.”

You have submitted to this office as a representative sample of the requested information a “Quarterly Gang Statistical Report from 4/01/98 - 6/30/98.” After reviewing the information at issue, we conclude that this report constitutes criminal combination information that is made confidential under article 61.05 of the Code of Criminal Procedure. The department therefore must withhold this and all similar information from the public pursuant to section 552.101 of the Government Code.<sup>2</sup>

Subsequent to your initial request for an open records decision, the City of Houston Legal Department (the “city”) received an open records request for two affidavits you submitted to this office in support of your brief regarding this matter. You now seek to withhold those affidavits, or portions thereof, pursuant to sections 552.108 and 552.111 of the Government Code.

It has generally been the practice of this office to treat a governmental body’s brief requesting an open records decision, as well as any supporting documentation, as being available to the public. Accordingly, this office deems such information as public unless the governmental body has otherwise demonstrated that the information is excepted from required public disclosure. In Open Records Decision No. 459 (1987), this office established the procedure that a governmental body must follow in order to withhold information contained in its request for an open records decision where we have determined that the information is otherwise excepted from required public disclosure:

Whenever we conclude that a governmental body may legally deny a request for information, we have necessarily found that the information is within an exception . . . of the act. To require a

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<sup>2</sup>In reaching our conclusion here, we 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 No. 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.

governmental body to disclose the contents of its request letter, *when to do so would reveal information which we have previously held is within [an] exception*, would effectively negate our previous conclusion. We therefore conclude that, when we have held information to be within [an] exception, that exception authorizes the governmental body to withhold the portion(s) of its request letter *that would disclose this information*. A governmental body which receives a request for its request letter and wishes to withhold part or all of its contents must seek our decision. [Emphasis added.]

The affidavits you seek to withhold do not reveal the contents of the statistical report submitted to this office.<sup>3</sup> We therefore conclude that the requested affidavits must be released in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth Soucy  
Assistant Attorney General  
Open Records Division

RHS/RWP/ch

Ref.: ID# 119041

Enclosures: Submitted documents

cc: Mr. Armando Villafranca  
Houston Chronicle  
P.O. Box 4260  
Houston, Texas 77210  
(w/o enclosures)

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<sup>3</sup>Nor do we believe that the release of the information contained in the affidavits would "interfere with law enforcement or prosecution" for purposes of section 552.108(b).