



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 18, 2010

Ms. Evelyn W. Njuguna
Assistant City Attorney
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77251-1562

OR2010-02440

Dear Ms. Njuguna:

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# 370878.

The City of Houston Police Department (the "city") received a request for five categories of information pertaining to the Houston Regional Intelligence Service Center (the "center"). You state some of the requested information will be released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, you inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-14587 (2009). In that decision, we concluded that multiple categories of information pertaining to the center must be withheld under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations. You do not indicate there has been any change in the facts, law, and circumstances on which the previous ruling is based. Thus, with regard to the requested information that is identical to the information previously requested and ruled on by this office, we conclude the city must continue to rely on our ruling in Open Records Letter No. 2009-14587 as a previous determination and withhold the information at issue in

¹We assume 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.

accordance with that decision. *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).

Next, we address your argument against disclosure of the submitted information. 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. Part 23 of title 28 of the Code of Federal Regulations was established to regulate intelligence databases pertaining to certain criminal activities, such as drug trafficking and extortion, that involve a large number of participants over a broad geographical area. *See* 28 C.F.R. § 23.2 (background of part 23). The policy standards of part 23 are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3711 *et seq.* *Id.* § 23.3(a). For purposes of part 23, a criminal intelligence system "means the arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information," and an intelligence project "means the organizational unit which operates an intelligence system on behalf of and for the benefit of a single agency or the organization which operates an interjurisdictional intelligence system on behalf of a group of participating agencies[.]" *Id.* § 23.3(b)(1), (5).

The release of information within these criminal intelligence databases is governed by section 23.20 of part 23, which provides in relevant part the following:

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

Id. § 23.20(e), (f). For purposes of section 23.20, "criminal intelligence information" means "data which has been evaluated to determine that it: (i) [i]s relevant to the identification of and the criminal activity engaged in by an individual who or organization which is

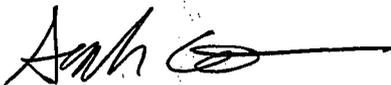
reasonably suspected of involvement in criminal activity, and (ii) [m]eets criminal intelligence system submission criteria[.]” *Id.* § 23.3(b)(3). You inform us, and have provided an affidavit to demonstrate, that the information in Exhibit 2 consists of criminal intelligence information maintained by the center as part of a criminal intelligence system operated pursuant to part 23 of title 28 of the Code of Federal Regulations. Upon review, we agree Exhibit 2 constitutes criminal intelligence information subject to section 23.20 and may be released only in accordance with that section. You state the requestor is not a member of a law enforcement authority. *See id.* § 23.20(f)(1). In addition, the requestor has not demonstrated he has a right to know the information at issue for purposes of section 23.20(e). Further, you state you have no indication that the release of the submitted information is necessary to avoid imminent danger to life or property. *Id.* § 23.20(f)(2). Therefore, we conclude Exhibit 2 is confidential under section 23.20 of title 28 of the Code of Federal Regulations and must be withheld on that basis under section 552.101 of the Government Code.

In summary, the city must continue to rely on Open Records Letter No. 2009-14587 as a previous determination and withhold the information that was at issue in the prior ruling in accordance with that ruling. The city must withhold Exhibit 2 under section 552.101 of the Government Code in conjunction with section 23.20 of title 28 of the Code of Federal Regulations.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eeg

Ref: ID# 370878

Enc. Submitted documents

c: Requestor
(w/o enclosures)