



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2010

Mr. Gregory A. Alicie
Open Records Specialist
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2010-03965

Dear Mr. Alicie:

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# 373349.

The Baytown Police Department (the "department") received a request for a copy of report number 09-51758. You claim the submitted report 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.

Section 552.108(a)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate the information you marked under section 552.108 pertains to a concluded criminal investigation that did not result in a conviction or deferred adjudication. Therefore, we agree the information you marked may be withheld under section 552.108(a)(2).

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. Section 552.101 encompasses information protected by other statutes, such as article 61.03 of the Code of Criminal Procedure. Chapter 61 of the Code of Criminal Procedure deals with intelligence information pertaining to street gangs. Article 61.02 provides in part that

(a) Subject to Subsection (b), a criminal justice agency shall compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs.

(b) A law enforcement agency in a municipality with a population of 50,000 or more or in a county with a population of 100,000 or more shall compile and maintain in a local or regional intelligence database criminal information relating to a criminal street gang as provided by Subsection (a). The information must be compiled and maintained in accordance with the criminal intelligence systems operating policies established under 28 C.F.R. Section 23.1 et seq. and the submission criteria established under Subsection (c).

Crim. Proc. Code art. 61.02(a), (b). Article 61.03 provides in relevant part:

(a) A criminal justice agency may release on request information maintained under [Chapter 61 of the Code of Criminal Procedure] to:

- (1) another criminal justice agency;
- (2) a court; or
- (3) a defendant in a criminal proceeding who is entitled to the discovery of the information under Chapter 39.

Id. art. 61.03(a). We note chapter 61 of the Code of Criminal Procedure does not make confidential all references to suspected gang activity or involvement. Rather, this chapter protects information that is specifically compiled and maintained in a database that is created under specific state and federal guidelines. *See id.* art. 61.02(b). You do not represent, and the documents do not reflect, that the gang information you marked in report number 09-51758 was obtained from an intelligence database as prescribed by chapter 61 of the Code of Criminal Procedure. Therefore, the gang information you marked is not confidential under article 61.03. As you have raised no further exceptions to disclosure of the gang information, it must be released.

In summary, the department may withhold the information you marked under section 552.108(a)(2) of the Government Code. The remaining information must be released.¹

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 373349

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹We note you have marked partial social security numbers under section 552.147 of the Government Code. 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 under the Act. Gov't Code § 552.147.