



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 8, 2014

Ms. Evelyn W. Kimeu  
Staff Attorney  
City of Houston Police Department  
1200 Travis  
Houston, Texas 77002-6000

OR2014-13850

Dear Ms. Kimeu:

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# 532174 (HPD ORU No. 14-3336).

The Houston Police Department (the "department") received a request for information pertaining to a specified murder. 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 representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, we address the requestor's assertion that the submitted information was responsive to a previous request for information and must now be released. The requestor contends that the submitted information was encompassed by the request that he submitted to the department on February 3, 2014. He argues that the department failed to oppose disclosure of the previously requested information when it withdrew its request for a ruling and may not

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<sup>1</sup>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 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.

now do so. The department states that when it previously received what is now the present request, the request was interpreted as being confined to information related to another murder, in which two named individuals, one of whom is the victim of the murder at issue here, were involved as suspects. The department represents to this office that the submitted information was not considered to be responsive to the previous request because the department interpreted the request to be for the murder specified in the prior request and involving the third named person. The department did not interpret the prior request to be for the murder at issue here. The question of whether the submitted information was responsive to the previous request is a factual issue. This office cannot resolve factual disputes in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision or on those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). The department represents to this office that although it made a good-faith effort to relate the previous request to responsive information, the department did not consider the submitted information to be encompassed by the previous request. Having considered the parties' arguments and reviewed the documentation they have submitted, we accept the department's representations and will address the public availability of the submitted information.<sup>2</sup>

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 chapter 61 of the Code of Criminal Procedure, which addresses intelligence information pertaining to street gangs. Article 61.02 provides, in part, "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." Crim. Proc. Code art. 61.02(a). Article 61.03 provides, in relevant part, the following:

(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.

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<sup>2</sup>We note that, based on the department's representation that it received the present request for information on May, 20, 2014, the department's request for this decision was timely. *See* Gov't Code §§ 552.301, .302.

*Id.* art. 61.03(a). Further, article 61.05 of the Code of Criminal Procedure provides release of this information to a person who is not entitled to the information is a Class A misdemeanor. *See id.* art. 61.05(b). You state the information in Exhibit 2 constitutes criminal gang information originating from and maintained in the department's criminal gang database for the purpose of investigating and prosecuting the criminal activities of street gangs. Further, you state the requestor is not entitled to obtain this information under article 61.03. Therefore, we conclude the department must withhold the information in Exhibit 2 under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

Section 552.101 of the Government Code also encompasses section 1703.306 of the Occupations Code, which provides the following:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The [Texas Department of Licensing and Regulation] or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

(c) A polygraph examiner to whom information acquired from a polygraph examination is disclosed under Subsection (a)(4) may not disclose the information except as provided by this section.

Occ. Code § 1703.306. Upon review, we agree the information in Exhibit 3 consists of information acquired from a polygraph examination subject to section 1703.306. You state the requestor does not fall into any of the categories of individuals who are authorized to receive the polygraph information under section 1703.306(a). Accordingly, the department

must withhold the information in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A government body claiming section 552.108 must reasonably explain how and why the release of the requested information 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 (Tex. 1977). You state information in Exhibits 4 and 5 relates to a criminal investigation that is inactive pending additional leads. You inform us the statute of limitations for the incident at issue has not run, and the case may be reactivated once additional leads are developed. Based on your representations and our review, we conclude the release of the information in Exhibits 4 and 5 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 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to Exhibits 4 and 5.

However, we note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the department may withhold the information in Exhibits 4 and 5 under section 552.108(a)(1) of the Government Code.

In summary, the department must withhold the information in Exhibit 2 under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. The department must withhold the information in Exhibit 3 under section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code. With the exception of basic information, which must be released, the department may withhold the information in Exhibits 4 and 5 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 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 'Cristian Rosas-Grillet', with a long, sweeping flourish extending to the right.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/dls

Ref: ID# 532174

Enc. Submitted documents

c: Requestor  
(w/o enclosures)