



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 10, 2014

Ms. Linda Pemberton
Paralegal
Office of the City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR2014-18212

Dear Ms. Pemberton:

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# 539012 (Ref. No. W014017).

The City of Killeen (the "city") received a request for all records pertaining to a specified incident, including specified categories. You state you do not have information responsive to portions of the request.¹ You state you have released some information to the requestor. You claim some of 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 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. 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:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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). 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 some of the submitted information is maintained in the city's police department's intelligence records for the purpose of investigating criminal gangs, and this information may only be retrieved from documents contained in gang records. We understand the requestor is not entitled to obtain the information under article 61.03. Therefore, we conclude the city must withhold this information, which you have marked, under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. As you raise no further exceptions against disclosure of the remaining information, the city must release the remaining information.

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# 539012

Enc. Submitted documents

c: Requestor
(w/o enclosures)