



May 17, 2002

Ms. Elaine S. Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR2002-2630

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163120.

The El Paso Police Department (the "department") received a request for three categories of information concerning the requestor. You indicate that you have informed the requestor that you do not have any information responsive to one category of the request and claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that Exhibit B is excepted from disclosure under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Chapter 61 of the Code of Criminal Procedure deals with intelligence information pertaining to street gangs. Article 61.02 provides in part that "a criminal justice agency may compile criminal information into an intelligence database for the purpose of investigating or prosecuting the criminal activities of criminal combinations or criminal street gangs." Article 61.03 provides in relevant part:

(a) A criminal justice agency that maintains criminal information under this chapter may release the information on request 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.

Crim. Proc. Code art. 61.03(a). You inform us that Exhibit B is “a compilation of intelligence information relating to a criminal street gang” and state that release to the requestor “does not fall under any of the circumstances for the releases [sic] of this information contained in Chapter 61, Code of Criminal Procedure.” Based on your representations and our review of the document, we conclude that Exhibit B must be withheld under section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

You claim that portions of Exhibit C are excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b) excepts from disclosure “[a]n internal record or notation of a law enforcement agency . . . that is maintained for internal use in matters relating to law enforcement . . . if: (1) release of the internal record or notation would interfere with law enforcement” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov’t Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that release of the yellow-highlighted information “would advise individuals . . . that the Police Department knows of a connection between that person and a specified gang [and] would advise gangs of the Police Department’s assessment of their size and strength.” Based on these representations, we conclude that the release of the yellow-highlighted information would interfere with law enforcement and may therefore be withheld under section 552.108(b)(1).

You assert that other information in Exhibit C is excepted under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

We have marked the motor vehicle record information in Exhibit C that you must withhold under section 552.130.

We also note that submitted information contains two social security numbers, which may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Even if these social security numbers are excepted from disclosure under section 552.101 in conjunction with the federal law, the requestor has a special right of access to his own social security number. *See* Gov't Code § 552.023 (individual has special right of access to information that would be withheld from general public to protect that individual's privacy). Although we have no basis for concluding that these social security numbers are confidential under federal law and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision, we caution that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the third party's social security number to the requestor, you should ensure that it was not obtained or is not maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, the department must withhold Exhibit B and the marked motor vehicle record information in Exhibit C. The yellow-highlighted portions of Exhibit C may also be withheld. All other information must be released, subject to federal law governing social security numbers.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 163120

Enc. Marked documents

c: Mr. Michael Zimprich
7716 Cielo Vista Drive
El Paso, Texas 79925
(w/o enclosures)