ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2007

Ms. Michele Austin
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251

OR2007-12289

Dear Ms. Austin:

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 #289667.

The Houston Police Department (the "department") received a request for information pertaining to a specified homicide investigation and conviction. You state that a portion of the requested information was released in 2003; you also state that the department "failed to request to withhold the remaining confidential information at that time." You claim that the submitted information is excepted from disclosure under sections 552.101, 552.130, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note, and you acknowledge, that the department has not complied with the time periods prescribed by section 552.301 of the Government Code in submitting your request for a decision to this office. When a governmental body fails to comply with the procedural requirements of section 552.301, the information at issue is presumed public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock*, 797 S.W.2d at 381. Because sections 552.101 and 552.130 of the Government Code can provide compelling reasons to withhold information, we will address the city's arguments against disclosure of the requested information under these exceptions. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

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. This section encompasses information protected by other statutes, including criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Texas Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. You assert that Exhibit 2 contains CHRI. However, Exhibit 2 pertains to an active warrant issued by Harris County and not to criminal history. Therefore, we find that Exhibit 2 may not be withheld under section 552.101 in conjunction with subchapter F of chapter 411 of the Government Code. *See id.* § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system).

You claim that Exhibit 3 is excepted from public disclosure pursuant to section 552.101 in conjunction with 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 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:
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> > (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). Further, article 61.05 of the Code of Criminal Procedure provides that release of the information to a person who is not entitled to the information is a Class A misdemeanor. You inform us that the information submitted as Exhibit 3 is

criminal gang information generated from a criminal intelligence database maintained in accordance with the policies and criteria established in section 23.1 of title 28 of the Code of Federal Regulations and article 61.02(2) of the Code of Criminal Procedure. Furthermore, you assert that the requestor is not entitled to the information under article 61.03. Thus, based on your representations and our review of the records, we conclude that the department must withhold Exhibit 3 pursuant to section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure. As our ruling on Exhibit 3 is dispositive, we need not address your remaining arguments regarding this information.

You argue that the submitted fingerprints, marked as Exhibit 4, are excepted from disclosure under section 552.101 in conjunction with chapter 560 of the Government Code. Chapter 560 provides that a governmental body may not release fingerprint information except in certain limited circumstances. *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (providing that biometric identifiers in possession of governmental body are exempt from disclosure under Act).[1] You state that the individual whose fingerprints are at issue has not provided consent to release this information, and that you are not aware of any statutory provision that would require disclosure of Exhibit 4 in this instance. Therefore, the department must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

You assert that Exhibit 5 contains information subject to 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:
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> > (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[.]

Gov't Code § 552.130. Exhibit 5 contains photocopies of Texas-issued driver's licenses and identification cards. You assert that some of the information you have highlighted is excepted from disclosure under section 552.130. We generally agree that information of this type is excepted from disclosure. However, some of the photocopies are illegible and out of focus; therefore, the department must only withhold the information we have marked under

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[1]We note that you raise section sections 559.001, 559.002, and 559.003 for fingerprint information. These sections were renumbered as chapter 560 by the Seventy-eighth Legislature. *See* Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2 (78), 2003 Tex. Gen. Laws 4140, 4144.

section 552.130.[2] We also note that an entire photocopy of a Texas-issued driver's license and identification card must be withheld under section 552.130.

You also assert that Exhibit 5 contains information subject to section 552.136 of the Government Code. Section 552.136(b) states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." However, we are unable to read the debit/credit card number you have highlighted within Exhibit 5. Therefore, the department may not withhold any information from disclosure under section 552.136.

In summary, the department must withhold Exhibit 3 under section 552.101 of the Government Code in conjunction with section 61.03 of the Texas Code of Criminal Procedure. The department must withhold Exhibit 4 under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The department must withhold the information we have marked within Exhibit 5 under section 552.130 of the Government Code. The remaining information must be released to the requestor.[3]

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, upon receiving this ruling, the governmental body

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[2]As our ruling on the Texas drivers' license information within Exhibit 5 is dispositive, we need not address your remaining argument against disclosure regarding this information.

[3]We note, and you acknowledge, that Exhibits 2 and 5 contain social security numbers. 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.

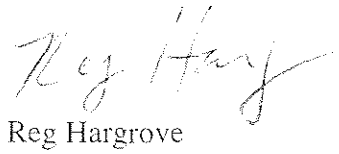
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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 Dep't of Pub. 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 Office of the Attorney General 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. 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 289667

Enc. Submitted documents

c: Ms. Rebecca K. Stewart
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Houston, Texas 77002
(w/o enclosures)