



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 31, 2009

Ms. Angela M. DeLuca
Assistant City Attorney
City of Bryan
P.O. Box 1000
Bryan, Texas 77805

OR2009-04187

Dear Ms. DeLuca:

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# 337455.

The Bryan Police Department (the "department") received a request for information regarding the requestor's client's inclusion in the department's criminal street gang database ("database"). You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor states, "Assuming that [the department] is acting in compliance with [chapter 61 of the Code of Criminal Procedure], as his chosen legal representative, I would ask that your organization produce pursuant to article 61.075" specified information. Article 61.02 of the Code of Criminal Procedure provides:

(a) Subject to Subsection (b), 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. The information may be compiled on paper, by computer, or in any other useful manner.

(b) A law enforcement agency may compile and maintain criminal information relating to a criminal street gang as provided by Subsection (a) in a local or regional intelligence database only if the agency compiles and maintains the information 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 61.02(c) requires the criminal information collected under chapter 61 relating to a criminal street gang to meet two conditions in order for the information to be included in an intelligence database. Article 61.075 provides:

A person or the parent or guardian of a child may request a law enforcement agency to determine whether the agency has collected or is maintaining, under criteria established under Article 61.02(c), criminal information relating solely to the person or child. The law enforcement agency shall respond to the request not later than the 10th business day after the date the agency receives the request.

Id. art. 61.075. It is unclear whether the department maintains a database pursuant to article 61.02. To the extent the department maintains an intelligence database, the requestor states he is requesting the information collected under subsection (c) of article 61.02 pursuant to article 61.075 of the Code of Criminal Procedure. Article 61.075 states a person or parent or guardian of a child may request that a law enforcement agency determine *whether* an individual is included in an intelligence database; however, the statute does not provide access to the information collected by an agency pursuant to article 61.02(c). Statutory construction should focus initially “‘on the literal text of the statute in question’ because ‘the text of the statute is the law.’” *Getts v. State*, 155 S.W.3d 153, 155 (Tex. Crim. App. 2005); *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991); Attorney General Opinion GA-0354 at 2 (2005). Like the courts, this office must ascertain and give effect to the intent of the Legislature. Attorney General Opinion No. GA-0669 (2008) (citing *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625-26 (Tex. 2008)). The bill analysis of the House Committee on Criminal Jurisprudence for article 61.075 states the intent of this statute is to allow individuals to discover whether information about them was included in a database and address fears about secret government lists. HOUSE COMMITTEE ON CRIMINAL JURISPRUDENCE, BILL ANALYSIS, Tex. H.B. 1658, 80th Leg., R.S. (2007). That analysis states article 61.075 provides a right to inquire about the existence of criminal information in a database. *Id.* Upon review, we find article 61.075 gives a person the right to determine if information about that person is included in an intelligence database. However, article 61.075 does not create a right of access to the documents or information providing the basis for an individual’s inclusion in an intelligence database under article 61.02. Accordingly, to the extent the department maintains an intelligence database, the department must inform the requestor whether the department has collected or is maintaining, under article 61.02(c), criminal information relating solely to the requestor’s client. However, article 61.075 does not require the department to release such information under article 61.075. As article 61.075 does not create a right of access to the requested information for the requestor or his client, we will address the department’s argument against disclosure of the submitted information.

Section 552.108(a)(1) 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

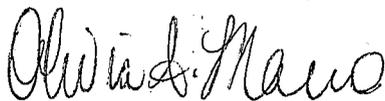
prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information is related to a case that is currently pending prosecution and the release of the information would interfere with the prosecution of crime. Based on your representations and our review, we conclude the release of the submitted information 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), writ ref’d n.r.e., 536 S.W.2d 559 (Tex. 1976) (per curiam) (court delineates law enforcement interests that are present in active cases). Accordingly, we find section 552.108(a)(1) is applicable to the submitted information.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Therefore, with the exception of basic information, the department may withhold the submitted information 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.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 at (512) 475-2497.

Sincerely,



Olivia A. Maceo
Assistant Attorney General
Open Records Division

OM/eeg

Ref: ID# 337455

Enc. Submitted documents

c: Requestor
(w/o enclosures)