



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 18, 2009

Ms. Jerris Penrod Mapes  
Assistant City Attorney  
City of Killeen  
402 North Second Street  
Killeen, Texas 76541-5298

OR2009-06737

Dear Ms. Mapes:

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# 343382.

The City of Killeen (the "city") received a request for information related to street gangs. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of 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. This section encompasses information protected by other statutes. You claim that the information at issue 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

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<sup>1</sup>Although you initially raised section 552.108 of the Government Code, you have not provided any arguments in support of this claim. Thus, we assume that the city no longer asserts section 552.108 as an exception against disclosure. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

<sup>2</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.

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:

(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.

*Id.* 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 requested information is criminal gang information maintained in the city police department’s gang intelligence files. Furthermore, we understand you to 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 city must withhold the requested information pursuant to section 552.101 of the Government Code in conjunction with article 61.03 of the Code of Criminal Procedure.

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](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,



Tamara Wilcox  
Assistant Attorney General  
Open Records Division

TW/eeg

Ref: ID# 343482

Enc. Submitted documents

c: Requestor  
(w/o enclosures)